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**The Solicitors' Journal**  
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All letters intended for publication must be authenticated by the name of the writer.

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## Current Topics.

## A County Courts Committee.

WE UNDERSTAND that the Lord Chancellor has appointed a strong committee to consider and report on the jurisdiction and practice of the county courts, and we presume that this will involve the consideration of the relation of the county courts to the High Court.

## The Land Transfer Commission.

SOLICITORS throughout the country may be assured that the most anxious attention is being devoted by the Council of the Law Society, in conjunction with the Associated Provincial Law Societies, to the evidence to be given before this commission, and that matters with regard to it are in a forward condition. We believe that a number of experienced London solicitors, headed by the President of the Law Society, will tender their testimony as to the working of compulsory land registration in London, and that representative solicitors from all parts of the country will testify to the cheapness and rapidity of the present system of conveyancing. It is also expected that evidence will be given before the commission on behalf of banks and building societies.

## Fees in Proceedings in the Winding up of Companies.

WE PRINT elsewhere an order, to take effect from the 31st of December next, as to the fees payable in proceedings in the winding up of companies. The fees prescribed are mostly the same in amount as those mentioned in the existing order of the 2nd of December, 1903, though new fees are added for every application to restore the name of a company and on every proof of debt above £2 (other than for workmen's wages). But the fees prescribed are reduced from somewhere over a score to seven. The new order provides that these fees shall be the fees "in lieu of the fees prescribed in Table A of the order as to fees of the 2nd of December, 1903, and the order of the 8th of November, 1904"; does this indicate that the fees prescribed in the former orders but not included in the new order are not to be charged?

## The Bacon Tercentenary.

THE 300TH anniversary of the election of Lord BACON as Treasurer of Gray's-inn was, in part, celebrated on the 17th of October. A further celebration will take place on the 2nd of November. In the speeches made last Saturday a good deal was said of BACON's work in beautifying Gray's-inn with gardens, &c., but nothing was said to connect his name with the library. This was described in 1707 as "mostly consisting of Books relating to ye Law and History first founded by ye Ld VERULAM," and in the preface to the catalogue of Gray's-inn Library issued about two years ago this passage was quoted from the Harleian MS., and BACON's offer to King JAMES of a digest of the laws of England was also referred to. Following up this "offer" of the founder of their library, the Benchers of Gray's-inn were, in the preface to the catalogue,

invited by the Master of the Library (Mr. MULLIGAN, K.C.) to consider the propriety of the four Inns of Court combining to initiate a scheme of codification. Nothing more has been heard of this proposal. Possibly the celebration of BACON'S treasurership will not be allowed to be completed without some further reference to his schemes of law reform. The Laws of England "ask much amendment for the Forme, which to reduce and perfect I hold to be one of the greatest Dowries that can be confer'd upon this Kingdome."

#### The Re-opening of the French Courts.

THE COURTS in Paris, like those in London, are opened with some ceremony after the Long Vacation. On the 17th of October, the day of the opening of the French courts, there was a formal sitting of the Court of Cassation and of the Court of Appeal. In the Court of Cassation (presided over by M. BALLOT BEAUPRÉ), the official representative of the Government (*procureur général*) gave a discourse in memory of two members of the court who had died during the past year. This discourse was interrupted by a spectator, who protested that the court had not acted in conformity with the Code of Criminal Procedure. The interruption was checked and the discourse proceeded to its termination. In the Court of Appeal, presided over by M. FORICHON, M. FABRE, the *procureur général*, spoke in memory of four members of the court recently deceased, and M. BROUCHOT, the deputy of the *procureur général*, delivered the customary oration (*mercuriale*) on the re-opening of the court. English lawyers may be reminded that the Court of Cassation, a national court, consists of a first or principal president, three presidents and forty-five judges, who sit in three chambers, and there are twenty-five local courts of appeal. There are also the courts of first instance and the inferior courts administered by justices of the peace. The number of cases decided by the Court of Appeal for the Department of the Seine was much less than in the preceding year, owing to the unwillingness of the parties to settle their differences. It is hoped that the arrears which have accumulated in the courts will be cleared off when there is an increase in the number of the judges. The number of these judges is already so large that some surprise will be felt at its being necessary to ask for more, but French judges in civil matters decide all questions of law and fact, proceed with much deliberation, and commit their judgments to writing. It may be added that the remuneration of half-a-dozen French judges is not equal to that of a single English judge.

#### Gift of Chattels by Husband to Wife.

SECTION 50 of the Conveyancing Act, 1881, enables a husband to convey to his wife freehold land or a thing in action; the latter expression including shares in a company (*Colonial Bank v. Whinney*, 11 App. Cas. 426, 438), debentures of a company (*Re Pryce, Ex parte Ransberg*, 4 Ch. D. 685), and, of course, property in the funds and a life policy. But until the Married Women's Property Act, 1882, a gift by a husband to a wife of personal chattels was inoperative owing to the common law doctrine of the unity of person of husband and wife. Section 1 (1) of that Act, which provides that "a married woman shall . . . be capable of acquiring . . . any . . . personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee," seems to be wide enough to cover the case of her acquiring personal property from her husband; but in the latest edition of a work of well-deserved authority doubt is expressed as to whether chattels can be given directly by a husband to his wife. "It is doubtful," say the learned editors of Key and Elphinstone's *Precedents* (2 K. & E., 8th ed., p. 575, note), "whether the common law doctrine as to the unity of person of husband and wife is abrogated by the Married Women's Property Act, 1882, so as to make it competent for the husband at law to make a direct gift of this kind [i.e., of chattels] to the wife." They do not, however, cite any judicial authority for this statement, nor do they explain the reasons for their view. On the other hand, the late Mr. WOLSTENHOLME (Conveyancing and Settled Land Acts, 9th, ed. p. 118) was unhesitating in affirming that, since by the Act of 1882 a married woman is capable of acquiring and disposing of any real and personal property as her separate property in the

same manner as if she were a *feme sole*, "she is capable of acquiring it from, or conveying it to, her husband." And in *Ramsay v. Margrett* (1894, 2 Q. B. 18, at p. 25) Lord ESHER says that since the Act of 1882 "a married woman and her husband are no longer in law one person; they are two persons, just as if they were two men." This was not a mere *dictum*, but was important for the decision of the case, and we do not find that it has been dissented from. It seems to put an end to the doubt raised in Key and Elphinstone. Should not that doubt either disappear from the next edition, or be supported by some reasons or authority?

#### The Intestates' Estates Act, 1890.

CAN A testator whose will, in the events which happen, becomes wholly inoperative be said to die intestate? This was the question with which JOYCE, J., had to deal in *Re Cuffe* (1908, 2 Ch. 500), and he answered it in the affirmative. Under the Intestates' Estates Act, 1890, the widow of a man who dies intestate leaving no issue is entitled to the whole of his real and personal estate, if it does not exceed £500, and otherwise, to £500 out of it. One condition of her taking, therefore, is that her husband shall die intestate. If he leaves a will and only part of his estate is effectually disposed of, he is for the purposes of the Statute of Distributions intestate as to the rest, and it goes to his next-of-kin. But it was held in *Re Twigg's Estate* (1892, 1 Ch. 579) that this construction was not applicable to the Act of 1890. There are, as CHITTY, J., pointed out, provisions in the Act—particularly those as to the valuation of the personal estate—which support the natural construction of the words "die intestate." The deceased does not die intestate if any part of his estate is in fact disposed of by his will. Nor, perhaps, does he die intestate if he appoints an executor who survives him, notwithstanding that the beneficial provisions of the will all lapse by reason of the deaths of the beneficiaries in his lifetime. But the case of *Re Cuffe* before JOYCE, J., was stronger than this, since the executor, as well as all the legatees, predeceased the testator. Thus the will had become wholly inoperative, and JOYCE, J., held, not unnaturally, that the deceased had died intestate. The widow, accordingly, was entitled to £500 out of the estate.

#### Third Party Notices.

ALTHOUGH THE changes in practice during the past year have not been numerous, the new practice books (Annual Practice, vol. 1, p. 207; Yearly Practice, vol. 1, p. 176) refer to a recent case—*Furness, Withy & Co. v. Pickering* (1908, 2 Ch. 224)—which is important in regard to the procedure upon applying for a third party notice under ord. 16, r. 48. The rule provides that where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the action, he may, by leave of the court or a judge, issue a notice to that effect which is to be served on such person in the same manner as a writ of summons. In the King's Bench Division the defendant, in ordinary cases, applies *ex parte* for leave to serve a third party notice. Unless the circumstances are exceptional, the matter is treated as solely affecting the defendant and the third party, and the plaintiff is not interested in being heard on the application. But in *Wye Valley Railway Co. v. Hawes* (16 Ch. D. 489), which was decided on the corresponding rule of R. S. C. 1875, HALL, V.C., intimated an opinion that the plaintiff ought to have notice of the application, and accordingly in the Chancery Division it has been the practice to serve notice on the plaintiff of an application for leave to issue a third party notice. "I should be unwilling," said the Vice-Chancellor, "to give the leave asked for without notice being given to the plaintiff of that the granting of which might interfere with their action in a very material way." But as JOYCE, J., pointed out on the present occasion, this was said when the practice was new, and was simply an expression of opinion that it was better to give notice to the plaintiff. The Vice-Chancellor admitted that he could make the order in the absence of the plaintiff, and JOYCE, J., declined to accept it as a justification for a difference in practice between the King's Bench and the Chancery Divisions. "My opinion," he said, "is that an order in such a case as this may be made *ex parte*, although it is always competent to the master or judge to require the plaintiff or any

other person to be served. But as a general rule I think that the application ought to be made *ex parte*." The application was based on a claim to contribution as between directors, and, a *prima facie* case being made out, an order for leave to issue the notice was made.

#### Express Prohibition of Authorized Trust Investments.

UNDER SECTION 1 of the Trustee Act, 1893, a trustee may, "unless expressly forbidden by the instrument (if any) creating the trust," invest trust funds in his hands in any of the securities specified or referred to in the section. Questions have frequently arisen as to what amounts to an express prohibition of any of the specified investments, and in particular, if the trust instrument contains a direction that the trust funds shall be invested in one or two specially selected securities, it may be argued that the testator or settlor intended that they should not be invested in any other way, and this comes very near an express prohibition. But section 4 provides that the powers conferred by section 1 shall be in addition to the powers conferred by the trust instrument; and Lord FIELD, in *Hume v. Lopes* (1892, A.C. p. 117), commenting on the corresponding provisions of the Trustee Act, 1888, observed that the proper course was to read into the instrument the various securities specified in the Act. If this is done, we have an instrument authorizing investment both in the securities mentioned by the settlor, and also in the securities mentioned in the statute. FARWELL J., adopted this reasoning in *Re Maire* (49 SOLICITORS' JOURNAL 383), where a testator had directed investment in two specified Government securities. If, he said, the will were read according to Lord FIELD's rule, the list of authorized investments was added to those prescribed by the testator, there being in the will no such express veto as the Act required. Similarly in the recent case of *Re Burke* (1908, 2 Ch. 248), NEVILLE J., insisted upon the necessity of there being an express veto to exclude the statutory investments. "The words of the Act require not only a direction that the trustees shall invest in certain investments, but an express prohibition of any of the investments permitted by the list which the testator wishes to exclude." In that case the testator had directed that the trust estate should be invested on deposit at the bank, and NEVILLE J., admitted that there was a strong case that other investments were inferentially forbidden. But they were not expressly forbidden, and following *Re Maire* (*supra*), he held that the trustees could invest on any of the securities authorized by the Trustee Act, 1893.

#### Agreement for Return of Premium Under Deed of Apprenticeship.

THE CASE of *Morley v. Baumgart*, which was heard by the Court of Appeal on the 17th of July, turned on the construction of a clause in an indenture of apprenticeship as to the return of part of the premium. The apprentice, a lad named SIMON GLASS, by the financial aid given by the Jewish Board of Guardians, was apprenticed to BAUMGART, the defendant. The parties to the deed were the defendant, the master, LOUIS GLASS, the parent of the apprentice, and the plaintiff, the Chairman of the Industrial Committee of the Guardians. After reciting that the apprentice had agreed to bind himself, and the master had agreed to accept him as an apprentice, upon the conditions hereinafter mentioned, and that the chairman had agreed to advance out of funds belonging to the Industrial Committee the premium required for the apprenticeship, it was witnessed that, in consideration of £10 paid to the master by the chairman and the agreement to pay the further sum of £10, the master covenanted with the parent and the apprentice, and as a separate covenant with the chairman, to receive the apprentice and instruct him in the trade of a photographer. Power was given to the chairman to call upon the master to take such proceedings to compel the attendance of the apprentice as the chairman might require, and after a provision for the repayment of a proportionate part of the premium in case of the death of the apprentice or the master during the continuance of the term, the deed proceeded "in case of the breach or non-performance by the master of any of the covenants or provisions herein contained, or if it shall appear to the chairman that from any cause whatever either the

master or the apprentice is unable to fulfil the conditions on his part herein contained, then the master shall on demand repay to the chairman a proportionate part of the premium paid as liquidated damages exclusive of any legal claim on the part of the apprentice or his parent on account of such breach. The parents, during the continuance of the apprenticeship, proceeded to America, taking their son, the apprentice, with them; and the question was whether in these circumstances the master was "unable" to fulfil the conditions within the meaning of the deed, and was liable to repay to the chairman a proportionate part of the premium. The Court of Appeal, reversing the decision of the Divisional Court, held that the chairman was warranted in deciding that the master, in consequence of what had happened, was "unable" to fulfil the conditions and liable to repay a proportionate part of the premium. The provision took effect and required repayment where there had been no default whatever on the part of the master. We think that the construction of the Court of Appeal will be generally accepted as carrying out the intention of the parties, though it may be argued that the master was always able to perform his part of the bargain, and was only prevented from performing it by the wrongful act of the apprentice and his parents.

#### Action to Enforce the Payment of Colonial Rates.

THE CASE of *Sydney Municipal Council v. Cook*, decided by GRANTHAM J., on the 15th of October, raised an interesting question of private international law. The action was brought by the Municipal Council of Sydney against the defendant to recover £3,919 4s. 3d. for rates payable by the defendant from 1898 to 1904 in respect of property owned by him in Moore-street, Sydney. By an Act of the colonial legislature the plaintiffs were authorized and empowered to carry out certain improvements in Moore-street, Sydney. Half of the cost of these improvements was to be borne by owners of property within the improvement area and paid by yearly instalments. From 1898 to 1904 inclusive the defendant was the owner of property situate within the improvement area, and the total amount of the contributions payable by him in respect of his property during these years amounted to £3,919 4s. 3d. By a section in an earlier Act incorporated in the Improvement Act, it was enacted that, in addition to the mode of enforcing payment of any sum due and recoverable in respect of any rate, and any amount otherwise payable under the Act, the council might recover any such sum by action or suit against any person liable under the provisions of the Act to pay such sum, and might in any such proceeding recover the arrears of any rates, not exceeding three years. It was submitted by the plaintiff that the action might be brought in England, the defendant having left the colony. For the defendant it was argued that taxes imposed in one country cannot be recovered in another, and that one Government will not enforce the revenue laws of another. The same principle applied to local rates. The learned judge, without hesitation, gave judgment for the defendant, upon the ground that the Act applied only to matters of local interest, and did not, and could not, confer the right to maintain an action in the English courts. This decision appears to us to be in some respects unsatisfactory. The general rule, as stated in *Dicey on the Conflict of Laws*, is that, when the defendant in an action in *personam* is, at the time for the service of the writ, in England, the court has jurisdiction in respect of any cause of action in whatever country such cause of action arises. This rule is no doubt subject to the exception that the English court has no jurisdiction to try an action to determine the title to, or the right to the possession of, any immoveable situate in any foreign land. No such question arose in the case under consideration, and our difficulty is in seeing that a debt created by a colonial legislature for which an action can be brought in the colonial courts is not enforceable in this country in the same manner as any other debt incurred in the colony. No decision can be cited inconsistent with such an action. It has indeed been said that our courts will not take notice of the revenue laws of a foreign country. But this is no authority for holding that an action to recover a debt incurred abroad can be defeated by shewing that the debt is a tax due to a foreign government.

#### Does an Order for the Maintenance of a Bastard Child Constitute a Debt?

IN THE case of *Re Harrington*, which was decided by WARRINGTON, J., on the 14th of October, without the least difficulty, the point in question seems to have arisen for the first time. The question was whether the amount of the arrears due under an affiliation order from the putative father of a bastard child could be recovered under an administration of the father's estate. The mother of the child had obtained from justices under section 4 of the Bastardy Laws Amendment Act, 1872, an order that the father should pay her five shillings a week for the maintenance of the child. The father had died leaving arrears unpaid, and the mother applied for leave to rank as a creditor against his estate. The application was rejected, the learned judge holding that the liability of the father could not be taken to be a debt due from him to the mother. It may well be that some persons who are not conversant with the law, and are anxious for the enforcement of the Bastardy Acts, may protest against this decision as being founded on a mere technicality. But it is founded on the familiar principle that where a statute creates a liability not existing at common law and gives also a particular remedy for enforcing it, the proceeding must be according to the particular mode given by the Act. A reference to the elaborate provisions in section 4 of the Act for enforcing an order for the maintenance of a bastard child will convince any lawyer that it was never intended to give the mother the rights of an ordinary creditor. The Act has made no provision for the contingency of the putative father dying after the date of the order. The persons against whom these orders are made belong for the most part to the working classes, who usually die without assets, so that a warrant of distress after their death can by no legislation be made effective.

#### Claim for Water Abstracted from City Aqueduct.

WE READ of a curious claim by the City against the State of New York. The City is said to have commenced proceedings to recover 150,000 dollars as the price of water taken from the City aqueduct in Ossining and used for various purposes in the State prison of "Sing Sing." This water appears to have been withdrawn from the aqueduct, at various times between 1857 and the present day, by pipes, the origin and existence of which were wholly unknown to the municipal corporation. The proceedings are taken upon the assumption that the Statute of Limitations does not apply to litigation between the City and the State. Having regard to the difficulties attending the proof or disproof of such a claim after more than fifty years have elapsed, we should imagine that few persons would think that a defence founded on the statute was unreasonable.

#### Concerning Occupation Roads.

OUR ancestors were chary of wasting land in roads and were accustomed to make one way serve for several houses or farms. Hence it is not unusual for the purchaser of a house or land to find, either that the mode of access thereto from the highway is by an occupation road over land belonging to another owner, or is over an occupation road extending beyond the house or land to be purchased to land belonging to another owner. In either case careful investigation as to the nature and extent of the rights of way enjoyed, or to be enjoyed, over the occupation road is requisite on the part of the purchaser, and it may be useful to state the points to which this investigation should be directed.

The first thing to be ascertained is whether the right of way arises under an express grant or by immemorial usage. In the former case the extent of the right is usually determined by the terms of the deed of grant. It appears that if these terms are ambiguous, evidence may be given of the surrounding circumstances in order to ascertain the intention of the parties to the grant. "As I understand," said JESSEL, M.R., in *Cannon v. Villars* (8 Ch. D., at p. 420), "the grant of a right of way *per se* and nothing else may be a right of footway, or it may be a general right of way—that is, a right of way not only for people on foot

but for people on horseback, for carts, carriages, and other vehicles. Which it is, is a question of construction of the grant, and that construction will of course depend on the circumstances surrounding, so to speak, the execution of the instrument. Now, one of those circumstances, and a very material circumstance, is the nature of the *locus in quo* over which the right is granted . . . *Prima facie* the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to be used; and both those circumstances may be legitimately called in aid in determining whether it is a general right of way or a right of way restricted to foot passengers or restricted to foot passengers and horsemen or cattle, which is generally called a drift way, or a general right of way for carts, horses, carriages and everything else" (see also *United Land Co. v. Great Eastern Railway Co.*, L. R. 10 Ch. App. 586). Hence in *Great Western Railway Co. v. Talbot* (1902, 2 Ch. 759) the grant of a right to use a level crossing for a tramway "for the accommodation of the owners and occupiers for the time being of the lands adjoining the railway" was held to be a grant of way according to the character, nature or extent enjoyed by the dominant tenement at the date of the grant, or previously thereto, and that it could not be used so as substantially to increase the burden of the easement. We formulate our first question, therefore, as follows:—

(1) Is the right of way enjoyed under an express grant or by immemorial usage?

(2) If the former [in case the grant was in favour of the owners and occupiers of the land to be purchased] the grant should be produced for examination [or in case the grant was in favour of adjoining land], what evidence can be given of the terms of the grant? If no such evidence can be given, for what purpose was such adjoining land used at the date of the grant?

It may be added in passing, that where the owner of two or more farms sells one of them, except and reserving to the owners and occupiers of the other farm or farms "all rights of way hitherto exercised by them in respect of" such other farm or farms over the farm sold, the purchaser is bound to give effect to this exception although there are no legal rights of way in existence over the farm sold, but only ways actually used by the owners and occupiers of such other farm or farms: *May v. Belleville* (1905, 2 Ch. 605).

It is when we come to a right of way acquired by prescription that the difficulty usually arises in defining the extent of such right. One would naturally suppose that the user would determine the extent of the right, and that, as a matter of law, the right of way is limited to the ordinary purposes of the land in the condition in which it has existed from time immemorial. "I should certainly say," remarked Lord ABINGER, in *Cowling v. Higginson* (4 M. & W., at p. 255), "that it is not a necessary inference of law that a way for agricultural purposes is a way for all purposes . . . if the evidence shews a user for one purpose, or for particular purposes only, an inference of general right would hardly be presumed." In that case it was admitted that there was a right of way for farming purposes over the plaintiff's land, but the defendant claimed a right of way over such land for the purpose of conveying coal got from his own land. It was held that proof of user for farming purposes did not necessarily prove a right of road for all purposes. But both in this case and in *Ballard v. Dyson* (1 Taunt. 279) the question of the extent of the right of way was considered to be one of fact for the jury, to be determined upon the circumstances in each case. And according to Lord ABINGER in *Cowling v. Higginson* (*ubi supra*) the jury, in coming to a conclusion, were entitled to look beyond the actual user of the road and to have regard to surrounding circumstances. "The extent of the right," he said (p. 252), "must depend upon the circumstances. If a road led through a park the jury might naturally infer the right to be limited; but if it went over a common, they might infer that it was a road for all purposes." Further, according to PARKE, J., in the same case (p. 256), "if it is shewn that the defendant, or those under whom he claimed, had used the way whenever they required it,

it is strong evidence to shew that they had a general right to use it for all purposes, and from which a jury might infer a general right."

All this was very nebulous and unsatisfactory, and it was some years before the courts arrived at the true principle. It seems to have been grasped by BOVILL, C.J., in *Williams v. James* (L.R. 2 C.P. 577), where he says (p. 580) that "when a right of way to a piece of land is proved, then that is, unless something appears to the contrary, a right of way for all purposes according to the ordinary and reasonable use to which that land might be applied at the time of the supposed grant. Such a right cannot be increased so as to affect the servient tenement by imposing on it any additional burden." This doctrine was further developed in *Wimbledon, etc., Commons Conservators v. Dixon* (L.R. 1 Ch. D. 362). In that case the road in question had been used for agricultural purposes only, except in some few cases for carrying building materials to enlarge the farmhouse and rebuild a cottage on the adjoining farm, and for carting away sand and gravel dug out of such farm. It was held that this did not establish a right of way for carting the materials required for building a number of new houses on the adjoining farm. In the course of his valuable judgment in this case, MELLISH, L.J., pointed out (p. 370) that the question as to the extent of the right of way "depended partly on a question of law and partly on a question of fact, but mainly on a question of law. When the question of law is settled there is no great difficulty in arriving at a proper conclusion in point of fact." The question of law he stated, in effect, as follows: Assuming it is proved that the way has been used by the owner and occupiers of the adjoining farm, not exclusively for agricultural purposes, but for all the purposes for which they wanted it in the state in which the land was at the time of the supposed grant—at the time when the way first began—and assuming that there has been no material alteration in the premises since that time, does that entitle the adjoining owner to alter substantially and increase the burden on the servient tenement by building any number of houses he pleases on this property and giving the persons who inhabit those houses a right to use the way for all purposes connected with the houses? Both he and JAMES and BAGGALLAY, L.J.J., decided this question in the negative, and affirmed the above-mentioned rule laid down by BOVILL, C.J. "I am satisfied," said JAMES, L.J. (p. 368), "that the true principle is . . . that you cannot from evidence of user of a privilege connected with the enjoyment of property in its original state, infer a right to use it into whatsoever form or for whatever purpose that property may be changed; that is to say, if a right of way to a field be proved by evidence of user, however general, for whatever purpose, *quid* field, the person who is the owner of that field cannot from that say, 'I have a right to turn that field into a manufactory or into a town,' and then use the way for the purposes of the manufactory or town so built." This principle was affirmed by the same judges in *Bradburn v. Morris* (3 Ch. D., at pp. 822, 823), and was applied by KEKEWICH, J., in the recent case of *Milner's Safe Co. (Limited) v. Great Northern and City Railway Co.* (1907, 1 Ch. 208, 226). We therefore state our next questions as follows:

3. If the right of way is claimed by prescription, for what kind of traffic has it been used?

4. [If the right of way is claimed in favour of land adjoining that to be purchased] are there any and what buildings on the adjoining land and have the owners and occupiers of such buildings used the road for carrying building materials, coals, &c., or for motor cycles or motor-cars?

5. Is any trade or manufacture carried on on such adjoining land?

We fear it would be hopeless to contend that, under the principle established by the last mentioned cases, the use of the occupation road for motor-cars imposes an additional burden on the servient tenement, though in fact, by their noise, weight, smell and dust they may cause new and grievous annoyance to the occupants of a house on the servient tenement. Use by a motor-car, we imagine, would be deemed at this day an ordinary and reasonable use of the road by the dominant owner. Whenever, however, there is a house near the road on the servient

tenement it should be ascertained, before the purchase contract is signed, whether the road is used, or is likely to be used, by motor-cars.

The next question is whether, where the land to be purchased is subject to a right of way in favour of adjoining land, the owner of such adjoining land can avail himself of it to reach other land of his situate beyond such adjoining land? He may have a colony of cottages close to his dominant tenement; can he give his cottagers a right of way over the occupation road? Here the principle, established as above mentioned—that the owner of the dominant tenement cannot increase the burden of the easement—applies, and it is clear that the dominant owner cannot give such right of way: *Colchester v. Roberts* (4 M. & W. 769). Nor can he get the benefit of the right of way for land beyond the dominant tenement by making a colourable use of the servient land. This was what the dominant owner in *Skull v. Glenister* (16 C.B.N.S. 81) attempted to do. He was entitled to a right of way to close A, and was building cottages on close B, and he carried the building materials to close A, deposited them there, and subsequently carted them from there to close B. It was held (p. 106) that he was not entitled to do this: see also *Harris v. Flower & Son* (74 L.J. Ch. 127). But a purchaser buying subject to a right of way does not want to have a lawsuit to prevent such illegal user of the right of way, hence the next question will be

(6) Has the right of way been always used exclusively in connection with the adjoining land to which it is annexed, or has the owner of such adjoining land used it for the purpose of other land of his?

Then there comes the question of the repair of the occupation road. As to this it is settled (1) that the servient owner is not bound to repair the road for the benefit of the dominant owner, and is not liable if the way is out of repair (*Pomfret v. Ricroft*, 1 Wms. Saunders 322); and (2) that the dominant owner is entitled to repair it at his own cost (*Gerrard v. Cooke*, 2 B. & P. N.R. 109, 115); and even where the road has never been metalled before, he may metal it so as to fit it for traffic (*Newcomen v. Coulson*, 5 Ch. D. 133). In the case of an occupation road over the land of another person to the land to be purchased this is likely to impose a considerable expense on the purchaser, and the next question is, therefore,

(7) Who repairs the occupation road, and when and by whom was it last repaired?

The last question is, what alterations the servient owner can make in the occupation road. He must not, of course, render the road less easily usable by the dominant owner (*Selby v. Nettlefold*, L.R. 9 Ch. App. 111), or alter the place of entry or access to the road (*Woodger v. Hadden*, 5 Taunt. 125, 132); but he is not bound to keep the road wider than is necessary for the reasonable enjoyment of the dominant owner's right of way (*Hutton v. Hambro*, 2 F. & F. 218), and so long as this is done the servient owner may put up a building or wall on part of the road (*Clifford v. Hoare*, L.R. 9 C.P. 362). Wherefore we arrive at the last question, namely,

(8) Has the occupation road been fenced in by the owner of the land over which it passes? and if so, what width has been left for the road?

## A Reading of the New Statutes.

### THE FATAL ACCIDENTS (DAMAGES) ACT, 1908 (8 ED. 7, c. 7).

Under the Fatal Accidents Act, 1846—Lord Campbell's Act—an action for a wrongful act, neglect or default causing death can be brought in the name of the executor or administrator of the deceased for the benefit of the wife, husband, parent and child; and the damages are to be such as the jury "may think proportioned to the injury resulting from such death" to the parties just mentioned, and are to be apportioned by the jury. The amending Act of 1864 (27 & 28 Vict. c. 95) provided for the case where there was no executor or administrator of the deceased, or where the executor or administrator did not commence an action within six months of the death, and enabled the parties beneficially entitled to the damages to bring an action. The general rule as regards damages recovered by a plaintiff who himself has suffered from the tortious act of the defendant is that

they are not to be diminished by his having received insurance moneys in respect of the injury: *Bradburn v. Great Western Railway Co.* (L. R. 10 Ex. 1). The insurance moneys are purchased by payment of the premiums, and are receivable under the contract of insurance, and not directly on account of the accident. "An accident must occur to entitle him to it, but it is not the accident, but his contract, which is the cause of his receiving it:" per *Pigott*, B. But in regard to damages under Lord Campbell's Act a different rule has been adopted. The damage is measured by the actual loss to the family of the deceased, and this is their pecuniary loss after allowing for insurances received on account of his death: *Hicks v. Newport, &c., Railway Co.* (4 B. & S. 403, note), *Grand Trunk Railway v. Jennings* (13 App. Cas. 800). The distinction, however, does not appear to rest on any sound basis, and it is abolished by the present statute. This provides that in assessing damages in any action, whether commenced before or after the passing of the Act, under the Fatal Accidents Act, 1846, there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of insurance, whether made before or after the passing of the Act. The Act came into operation on the 1st of August.

#### THE COMPANIES ACT, 1908 (8 ED. 7, C. 12).

Companies registered in the United Kingdom have, under section 18 of the Companies Act, 1862, an unlimited power to hold lands, except as to the non-commercial companies referred to in section 21. No such power has existed in favour of companies incorporated in British possessions. The present Act puts them in the same position in this respect as companies incorporated here under the Companies Acts, 1862 to 1907, upon condition of their filing with the Registrar of Joint Stock Companies the documents and particulars specified in section 35 (1), paragraphs (a), (b) and (c), of the Act of 1907; that is, (a) a certified copy of the instrument defining the constitution of the company; (b) a list of the directors; and (c) the names and addresses of one or more persons resident in the United Kingdom authorized to accept on behalf of the company service of process and notices. The Act came into operation on the 1st of August.

#### COSTS IN CRIMINAL CASES ACT, 1908 (8 ED. 7, C. 15).

This is an Act to consolidate and amend the law relating to the payment of costs in criminal cases. That the law hitherto has been scattered over a large number of statutes is shown by the schedule, which contains a list of thirty-six Acts which are in part repealed. The present Act consists of ten sections. Sections 1 to 5 deal with the payment of costs out of local funds; section 6 with orders for payment of costs by the defendant or prosecutor; and sections 7 to 10 are supplemental. As to payment of costs out of public funds it is needless to review the various Acts, such as the Criminal Law Act, 1826, and Acts dealing with the particular offences, by which such payment has hitherto been authorized. Section 1 of the present Act now provides generally that courts of assize and quarter sessions, courts of summary jurisdiction, and justices who examine into charges for indictable offences may direct the payment of the costs of the prosecution or defence, or both, out of the funds of the county or county borough. Sub-section 2 defines the amount of costs so payable, and sub-section 3 includes the fees of solicitor and counsel, and other expenses of defence in cases under the Poor Prisoners' Defence Act, 1903. Sections 2 and 3 regulate the mode of payment of costs, and section 4 defines the funds which are liable. By section 5 the Home Secretary is empowered to make regulations for the rates or scales of payment of costs out of local funds, and the conditions under which costs may be allowed. As regards costs payable by the defendant or prosecutor, these have been allowed in certain cases by particular statutes, and the Summary Jurisdiction Act, 1848, s. 18, confers generally on courts of summary jurisdiction a power to order an unsuccessful prosecutor or defendant to pay the costs of the successful party. But as regards indictable offences there has been no general provision enabling a prosecutor to recover the costs of the prosecution. The present statute does not seem to touch the question of costs ordered to be paid by a court of summary jurisdiction, and the power to make such order will still depend on section 18 of the Act of 1848. It seems singular that the statute was not made more comprehensive. But section 6 gives a court before whom a person is convicted of an indictable offence power to order the person convicted, in addition to any other lawful punishment, to pay the whole or part of the costs of the prosecution; and sub-section 2 allows costs in cases under certain Acts—the Corrupt Practices Prevention Act, 1854, the Corrupt and Illegal Practices Prevention Act, 1883, the Merchandise Marks Acts, 1887 to 1894, and the Vexatious Indictments Act, 1859—to be imposed on the unsuccessful prosecutor. These latter provisions continue the existing law. The Act comes into force on the 1st of January, 1909.

#### THE REGISTRATION ACT, 1908 (8 ED. 7, C. 21).

Under section 62 of the Parliamentary Voters' Registration Act,

1843 (6 & 7 Vict. c. 18), notice of appeal against a decision of a revising barrister had to be given within the first four days of the following Michaelmas term. The present Act alters this date to the 26th of October, and also dispenses with the requirement of section 42 of the Act of 1843 that the revising barrister shall read his statement of his decision in open court. It must instead be submitted to the appellant, who, if he approves of it, will sign it and return it to the revising barrister.

#### THE MARRIED WOMEN'S PROPERTY ACT, 1908 (8 ED. 7, C. 27).

This Act has already been noticed: *ante*, p. 761. It comes into operation on the 1st of January, 1909.

#### THE AGRICULTURAL HOLDINGS ACT, 1908 (8 ED. 7, C. 28).

This Act purports to be purely consolidating and replaces the following Acts, which are repealed: The Agricultural Holdings Acts, 1883, 1900, and 1906: parts of the Tenants' Compensation Act, 1890; and the Market Gardeners' Compensation Act, 1895. It comes into operation on the 1st of January, 1909.

#### THE FRIENDLY SOCIETIES ACT, 1908 (8 ED. 7, C. 32).

This Act introduces a number of amendments in matters of detail in the Friendly Societies Act, 1896. It adds to the objects of such societies the "guaranteeing of the performance of their duties by officers and servants of the society or any branch thereof": section 1; it allows of persons under one year of age being members of a registered society or branch, and amends section 36 of the Act of 1896 accordingly: section 2; it extends the limits of benefit from gross sums or annuities in section 41 of the Act of 1896 from £250 to £300, and from £50 to £52 respectively: section 3; it includes trust investments generally as investments for a society's funds: section 4; it introduces a definition of "dispute" so as to subject to decision under the society's rules any dispute arising on the question whether a member or person aggrieved is entitled to be or continue to be a member, but otherwise only disputes on a question arising during the continuance of membership, or out of a previous relation of membership: section 6; it makes costs directed by the chief or other registrar to be paid by any person recoverable summarily before a court of summary jurisdiction as a civil debt: section 10; and it makes provision for the service of process against a society for the recovery of a fine under the Act of 1896. We have already referred (*ante*, p. 773) to the direction in section 14 for the insertion in future copies of the Act of 1896 of the amendments made by the present Act. The Act comes into operation on the 1st of January, 1909.

#### THE TELEGRAPH CONSTRUCTION ACT, 1908 (8 ED. 7, C. 33).

The Telegraph Act, 1878 (41 & 42 Vict. c. 76), enabled questions as to the placing by the Postmaster-General of telegraph wires and posts in, under, upon, or over any street or public road and certain other places to be referred, in case of dispute, to a police or stipendiary magistrate, or, if there was none, to the county court judge, and the necessary consent could be given by such authority either unconditionally, or subject to pecuniary or other terms. The present Act extends this procedure to hedges and banks forming the boundary of any street or public road, and of unenclosed land adjoining a street or public road, not being common or public recreation land: section 1. As regards public recreation land the consent of the person having the control or management of the land is required: section 3. Section 5 confers on the Postmaster-General power to give notice requiring trees obstructing telegraph lines to be lopped, and, in default, himself to cause this to be done. The Act comes into operation on the 1st of August.

#### THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908 (8 ED. 7, C. 36).

This Act consolidates the Allotments Acts, 1887 and 1890, the Small Holdings Act, 1892, and the Small Holdings and Allotments Act, 1897, which are repealed. Section 13 reproduces section 19 of the Land Transfer Act, 1897, requiring the title to land purchased for small holdings to be registered, and that section, accordingly, is repealed.

#### THE ENDOWED SCHOOLS (MASTERS) ACT, 1908 (8 ED. 7, C. 39).

This Act is intended to overrule *Wright v. Marquis of Zetland* (1908, 1 K. B. 63), and to secure the position of assistant masters in endowed schools. Such a master is to be deemed to be in the employment of the governing body, and, subject to any special provisions as to notice contained in a scheme relating to the school, or to any special agreement, his dismissal cannot take effect except at the end of a school term, and after two months' notice given by or on behalf of the governing body. But this is not to prevent his dismissal without notice for misconduct or other good and urgent cause. The Act comes into force on the 1st of August.

#### THE OLD AGE PENSIONS ACT, 1908 (8 ED. 7, C. 40).

This Act has already been considered (*ante*, pp. 782, 793).

## Reviews.

## Encyclopædia of the Laws of England.

ENCYCLOPÆDIA OF THE LAWS OF ENGLAND, WITH FORMS AND PRECEDENTS. By the Most Eminent Legal Authorities. SECOND EDITION, REVISED AND ENLARGED. VOLUME XII: PROCTOR TO REVISING BARRISTER. Sweet & Maxwell (Limited); Wm. Green & Sons, Edinburgh.

The re-issue of this useful work proceeds quickly towards completion. The articles bear frequent marks of the careful revision they have undergone, though even the most patient reviser is not infallible, and the article on "Protector of the Settlement," though it contains references to several recent cases, fails to notice *Cohen v. Bayley-Worthington* (1908, A. C. 97), where, in pursuance of the decision in *Bell v. Holtby* (L. R. 15 Eq. 178)—which is duly referred to—the survivor of several persons appointed protectors was held competent to consent to a disentailing deed. The article on "Provisional Order" gives in tabular form a convenient list of the various matters, with the enabling statutes, in regard to which the Board of Trade, the Local Government Board, the Board of Agriculture and Fisheries, and the Board of Education respectively are empowered to make such orders. The Public Authorities Protection Act, 1893, has been the subject of frequent decision during the last few years, and the cases are well collected and arranged in Mr. Max Robertson's article on the Act. Other important articles in the volume are: "Railways," by Mr. Alexander Pulling, which has been carefully brought up to date; "Rating," by Mr. Castle, K.C.; "Receivers," by Master Burney; "Recovery of Land," by Mr. Fox and Mr. Hindmarsh; "Registration of Deeds" and "Registration of Title," by Mr. C. F. Brickdale; and "Restraint of Trade," by Mr. Kerly, revised by Mr. H. G. L. Child. In the last-named article a list is given of the reported cases in which covenants in restraint of trade have been adjudicated upon, with concise details. The series is a very convenient one for ready reference.

## Books of the Week.

The Law of Trade Marks and Trade Name, with Chapters on Trade Secret and Trade Label, and a Full Collection of Statutes, Rules, Forms, and Precedents. By D. M. KERLY, M.A., LL.B., Barrister-at-Law. Third Edition. By the Author and F. G. UNDERHAY, M.A., Barrister-at-Law. Sweet & Maxwell (Limited).

The Laws of England: being a Complete Statement of the Whole Law of England. By the Right Honourable the Earl of HALSBURY, Lord High Chancellor of Great Britain, 1885-86, 1886-92 and 1895-1905, and Other Lawyers. Vol. III.: Bills of Sale, Bonds, Boundaries, Fences, and Party Walls, Building Contracts, Engineers and Architects, Building Societies, Burial and Cremation. Butterworth & Co.

An Encyclopædia of Forms and Precedents other than Court Forms. By Eminent Conveyancing and Commercial Counsel, under the General Editorship of ARTHUR UNDERHILL, M.A., LL.D., one of the Conveyancing Counsel of the High Court; assisted by HUBERT F. F. GREENLAND, B.A., and HUMPHREY H. KING, B.A., LL.B., Barristers-at-Law. Vol. XV.: Trusts and Trustees to Yorkshire Registry. Butterworth & Co.

A Code of the Law of Actionable Defamation, with a continuous Commentary and Appendices. By GEORGE SPENCER BOWER, K.C. Sweet & Maxwell (Limited).

The Law of Fraudulent and Voluntary Conveyances: being a Treatise on the Statutes of Elizabeth against Fraudulent Alienations and on the Law of Voluntary Dispositions of Property. By the late H. W. MAY, B.A. Third Edition. By W. DOUGLAS EDWARDS, LL.B., Barrister-at-Law. Stevens & Haynes.

Seaborne's Vendors and Purchasers: being a Concise Manual of the Law relating to Vendors and Purchasers of Real Property. By W. ARNOLD JOLLY, M.A., Barrister-at-Law. Seventh Edition. Butterworth & Co.

Hazell's Annual for 1908: a Cyclopædic Record of Men and Affairs for Use in 1908. Revised to December 2nd, 1907, arranged Alphabetically and Furnished with a Full Index. Edited by W. PALMER, B.A. (Lond.). Twenty-third Year of Issue. Hazell, Watson, & Viney (Limited).

The Money-lenders Act, 1900, (63 & 64 Vict. c. 51). By JOSEPH BRIDGES MATTHEWS and GEORGE FREDERICK SPEAR, M.A., Barristers-at-Law. Being a New Edition of the Second Part of the Law of Money-lending, Past and Present. By J. B. MATTHEWS. Sweet & Maxwell (Limited).

A Practical Guide to the Death Duties and to the Preparation of Death Duty Accounts. By CHARLES BEATTY, Solicitor, of the Estate Duty Office. Second Edition (Revised and Enlarged). Elingham Wilson.

The Elements of Commercial Law. By HENRY W. DISNEY, B.A. (Oxon.), Barrister-at-Law. Macdonald & Evans.

Compensation in Licensing. The Licensing Bill, 1908, with a Historical and Legal Retrospect. By SIR RALPH LITTLER, C.B., K.C. Fourth Edition, almost entirely Re-written. Butterworth & Co.

The Architects' Law Reports and Review (Illustrated). By ARTHUR CROW, F.R.I.B.A. Legal Editor: A. F. JENKIN, Esq., Barrister-at-Law. Vol. III., 1906-7. Phipps & Connor.

The Law Quarterly Review. Edited by SIR FREDERICK POLLOCK, BART., D.C.L., LL.D. Stevens & Sons (Limited).

American Law Review, September-October, 1908. Editor: CHARLES E. GRINNELL. Reeves & Turner.

Licences and Compensation: a Reply to Sir Thomas Whittaker, M.P. Part I: The Property in a Licence. Part II: The Basis of Compensation. By CECIL HOLDEN, Coroner of the Borough of Birkenhead, and H. HUME BARNE, Barrister-at-Law. B. Haram & Co.

An Essay on the Philosophy of the Licensing Bill. By F. E. SMITH, K.C., M.P., and ERNEST E. WILLIAMS, Barrister-at-Law. P. S. King & Son.

The Licensing Bill, 1908: Full Text, with Notes. By J. SCOTT DUCKERS, Solicitor. Fourth Edition. C.E.T.S. Publication Depot.

Zeitschrift für Völkerrecht und Bundesstaatsrecht. Herausgegeben von Professor D. JOSEF KOHLER in Berlin und Professor Dr. L. OPPENHEIM in Cambridge. III. Band, 1, Heft. London: Stevens & Sons (Limited).

## Correspondence.

## The Late Mr. Arthur Burrows.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*

Sir.—Mr. Arthur Burrows was ninety-six when he died, and he died in harness after more than seventy years spent in the active pursuit of his calling. Physical and mental vigour such as his, in one who was all but a centenarian, is so phenomenal, even in the law, that no truthful sketch of the man in his old age can be without a certain value.

Late one afternoon in January, 1902, I sat with Arthur Burrows in his room in Lincoln's-inn, and watched him as he skimmed through sheet after sheet of his own spidery handwriting. The occasion was a conference upon certain queries which he had raised in his opinion upon a court title. Though the papers had been out of his hands for some days, the two or three questions which he asked in his slow, courteous way as he listened to my explanations shewed that the facts of the case were all present to his mind; and having heard me out, he settled down to refresh his memory with the exact terms of his conditions of sale.

As I studied him in that quiet room a consciousness of what a prodigy he was stole upon me for the first time. There he sat in the gathering dusk: a spare man with a freshish complexion and an abundant crop of grey hair, reading without spectacles by the light of a single candle; wholly absorbed in his work and manifestly enjoying himself. His eyes seemed a little tired and a little watery, and his hands were shrivelled and somewhat clawlike, but, take him for all in all, he did not look more than seventy. And yet that courteous elderly gentleman, who sat up so straight in his chair, and read without glasses, was within a few months of his ninetieth birthday. As I marvelled over this reflection I remembered that his hearing was as excellent as his sight.

The chambers which he occupied at the time of his death were quite in harmony with his own vast longevity. 21, Old-buildings dates back to early Stuart times, and it abuts upon the Old Hall, which is a Tudor relic—of all the generations who had eaten their terms there he was, perhaps, the last survivor!—but in 1902 he was in modern chambers at 9, Old-square. There were, however, a few objects in his room which told of a bygone day. On the mantelpiece stood a bronze bust of Eldon, flanked by an ancient pair of brass candlesticks. Upon the wall hung two prints in tarnished gilt frames. They were scenes from Vanbrugh's comedies, engravings after Zoffany, each containing a portrait of Garrick. I had heard that these prints had been given by the artist to the old man's father, and I knew that Zoffany was a painter of repute when George III. was young. But even that dim past seemed hardly older than the man before me. He had, at least, been in touch with it. As a boy he might have talked with Garrick's widow, and he was in practice at the bar before Eldon died.

I had done business with Arthur Burrows for a good many years prior to that afternoon in 1902. During these years I had seen little or no change in him, and down to the last he seemed the same. His hair and beard had, perhaps, grown a little whiter, but his vitality was unimpaired, and his mind worked like a well-regulated machine. The man who was a full-blown conveyancer when the Wills Act came

into force, and was settling assurances in the days when a lease and a release were the ordinary form of conveyance to a purchaser, saw his world new-made over and over again, and he adapted himself to all the changes. The Land Transfer Act must have seemed a strange monster to a conveyancer of eighty-five, but he was not disturbed by it. He moved with the times, and he was a master of his craft to the very end.

No man can preserve his faculties to extreme old age without being conscious that the world about him is always on the watch for some token of his decay. More than once of late years Arthur Burrows brought to my mind Dr. Johnson's complaint upon this head. If ever the old man were called upon to correct one of his drafts, he took pains to make it clear that the slip—no matter how trifling—was no fault of his: that his instructions had been to blame. This was no more than the truth, but the mere fact that he troubled himself to point it out showed how well he understood that a veteran in his ninth decade must always be on the defensive.

Conveyancing counsel of the court are such autocrats within their own borders that, even if a man be nothing worse than crotchety or nervous, he can drive to the verge of distraction the unfortunate clients whom the rota has swept into his clutches. The ceremony of balloting is an anxious moment for a seasoned practitioner who knows that he has a difficult title to submit. Right joyous was such an one if the registrars' box yielded up an ivory stamped "Burrows," for the bearer of that name was as practical as he was learned. He was so quick, too, and so anxious to save trouble, and there was always an old-fashioned moderation about his fees. He fell upon his work with a sort of intellectual glee. When he was about ninety I heard on unimpeachable authority that one morning an abstract of more than a hundred sheets was taken in to him. "I'll soon knock this off," was his comment as he glanced over it.

Only a few months ago he knocked off in two or three days a court title of singular complexity. The abstract, scored in the margin, here, there, and everywhere, with the queer oblique strokes of his pencil and bearing a few notes—mere hieroglyphics, some of them—lies before me as I write. A longer note of his, which appears upon another of the documents, is very characteristic of the man. It was written in answer to an invitation to express his opinion upon an obscure point of ecclesiastical law, arising in the action, but not within the scope of his reference. His note covers the whole ground of the query, and the opening sentence runs as follows, "I have great pleasure in answering the Master's question." In his case these were no mere words of courtesy. He so loved his work that he really found a delight in going out of his way to look up a point—even at ninety-six.

"CHRISTIAN TEARLE."

October 17.

### Solicitors and Clients.

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—I have been interested in reading in your journal the report of the meeting of the Law Society held at Birmingham, when the paper entitled "Solicitors and the Protection of Clients and Compulsory Membership of the Law Society" was again to the front.

As regards compulsory membership. It would appear that out of 18,000 practising solicitors, only 8,600 consider it worth while to become members of the Law Society. Surely this should be sufficient reason why a solicitor should still be allowed to exercise his discretion in the matter?

I remember the time when to be a member was always looked upon as an unquestionable outward and visible sign of probity, but since the prosecution of Mr. Lake and other members this virtue has, I fear, faded slightly.

As regards the method of keeping accounts by solicitors. It would be instructive to know "the number of solicitors who attended the meeting at Birmingham who keep their accounts strictly in accordance with the prescribed forms."

I still maintain that all the book-keeping in the world, coupled with membership of the Law Society, will not make a solicitor honest, if his intention be to be dishonest. I counsel others, and practise myself, the utmost care and regularity in keeping accounts.

It appears to me anything but sound policy for the profession to be perpetually bringing to notice the shortcomings of its really few black sheep, and reiterating the proposed remedies for what is apparently an incurable disease. Neither do I think that by so doing, the public, in this year of grace 1908, is likely to be inspired with more confidence in the profession. Probably it tends to cause the reverse feeling. Solicitors will, I presume, still continue to be looked upon merely as "necessary evils."

All the Law Society can do is to cause crime among our ranks to be punished when it occurs. It cannot prevent it from happening.

ATTORNEY-AT-LAW.

[We do not agree with all our correspondent's views.—Ed. *S.J.*]

### What is Metheglin?

[To the Editor of the *Solicitors' Journal and Weekly Reporter*.]

Sir,—I am not "an excise officer in a remote country district," and it would be an absolute misnomer to describe myself as an "authority on licensing matters," and yet I can enlighten you as to what metheglin is. It is a liquor made of honey and water boiled and fermented, and often enriched with spices.

It may elucidate the mystery if I add that I was as ignorant of the nature of the drink as you were until I turned to my dictionary. The components of the liquor are such as commend themselves to one, though I freely admit that the concoction may not be desirable for children, or, perchance, for some of their elders.

H. H. STOCKDALE ROSS.

Tarring, Worthing, October 17.

[We have been favoured with similar replies from other readers.—Ed. *S.J.*]

### New Orders, &c.

#### Supreme Court Fees.

#### COMPANIES WINDING UP.

I, the Right Honourable Robert Threshie Baron Loreburn, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court and with the concurrence of the Lords Commissioners of His Majesty's Treasury, do, by virtue of the powers vested in me by the Judicature Act, 1875, the Companies (Winding Up) Act, 1890, and all other powers enabling me in that behalf, order and direct that the fees and percentages to be taken in the High Court of Justice and the Court of Appeal in respect of all proceedings in the winding up of companies under the Companies Acts, 1862 to 1907, shall from and after the 31st December, 1908, be the fees and percentages fixed and appointed to be taken by the Orders for the time being in force as to Supreme Court fees and the fees and percentages contained in the schedule hereto in lieu of the fees prescribed in Table A of the Order as to fees of the 2nd December, 1903, and the Order of 8th November, 1904.

#### The Schedule hereto.

	£	s.	d.
Every Petition for winding up	2	0	0
Every Order made in Court (except an Order upon a Petition for winding up)	1	0	0
Every Order appointing a Shorthand Writer	0	5	0
Every inspection of a file of proceedings under Rule 19	0	1	0
Every application to approve a reconstruction or other scheme of arrangement under the Joint Stock Companies Arrangement Act, 1870	5	0	0
Every application to restore the name of a company to the Registrar of Joint Stock Companies	2	0	0
On every proof of debt above £2 (other than proof for workmen's wages under Rule 102)	0	1	0

(Signed) LOREBURN, C.  
ALVERSTONE, C.J.  
C. SWINFEN EADY, J.  
RALPH NEVILLE, J.

We concur in the above Order.

(Signed) J. HERBERT LEWIS,  
CECIL NORTON,

Commissioners of H.M. Treasury.

July 31st, 1908.

### CASES OF THE WEEK.

#### High Court—Chancery Division.

**EBBERN v. FOWLER.** Joyce, J. 26th March; 31st July; 20th Oct. SETTLEMENT—CLASS—"CHILD OR CHILDREN"—ILLEGITIMATE CHILD EN VENTRE SA MÈRE—MARRIAGE WITH A DECEASED WIFE'S SISTER—REPUTATION.

*A gift to illegitimate children as a class does not include afterborn children. A child born of parents not lawfully married cannot, while en ventre sa mère, be reputed to be the son of a particular person. Where a settlement was made on the children of E., who had then gone through the ceremony of marriage with J. K., he having previously been married to a deceased sister of E., and E. was enceinte with the plaintiff at the time of the settlement.*

*Held, that the plaintiff took no benefit under the settlement.*

Re Shaw, Robinson v. Shaw (1894, 2 Ch. 573), followed, reluctantly.

On the 31st of October, 1878, Elizabeth Ebbern went through the ceremony of marriage with John Kinder, who had been the husband of a deceased sister of Elizabeth. On the 1st of July, 1879, the father

and mother of Elizabeth Kinder settled a sum of £3,300 Bank Annuities by a settlement providing life interests for the settlors during their lives, and that thereafter the trust funds should be held in thirds for the three daughters of the settlors, as to two of the daughters one-third each for her life, with a power of appointment by will to any husband surviving her, and subject thereto for her children, and as to Elizabeth (therein referred to as the daughter of the settlors and the wife of John Kinder) that one-third should be held in trust for her during her life, and after her death in trust for the child, if only one, or for the children, if more than one, of the said Elizabeth Kinder, who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, and if more than one in equal shares. The settlement also declared that Francis Ebborn, a son of Elizabeth Kinder born before her marriage with John Kinder, should for the purpose of taking an interest under the trusts thereinbefore declared be considered as the legitimate child of Elizabeth Kinder. Francis Kinder was the only son born of Elizabeth Kinder and John Kinder at the date of the settlement, but at that date Elizabeth was enceinte with the plaintiff, John Thomas Ebborn (otherwise Kinder). Francis died under twenty-one years of age; Elizabeth Kinder died in 1903; and after the death of Emma Matilda Ebborn, the settlor, who survived her husband, the plaintiff claimed to be entitled to his share in the trust funds as a child of Elizabeth, which share, in the events which had happened, amounted to one-half. Action.

JOYCE, J.—On the 1st of July, 1879, Mrs. Emma Matilda Ebborn was entitled to £3,300 Bank Annuities which Mr. and Mrs. Ebborn settled by a deed of that date upon trusts for their own lives, and thereafter to divide the trust funds in three parts, one for each of the daughters of the settlors for her life, and then, as there provided, to her child and children in equal shares. Under these trusts only legitimate children could take without special provisions enabling illegitimate children to be admitted. One daughter, Elizabeth, had previously to the date of the settlement gone through the ceremony of marriage with John Kinder, who had been the husband of her deceased sister, and before marriage had an illegitimate son, Francis, reputed to be the son of John Kinder, and at the date of the settlement Elizabeth was enceinte with the plaintiff. In the settlement there are some special words with reference to Elizabeth: she is referred to as the wife of John Kinder, and the words of the settlement might have gone further, and words might have been inserted having the effect of admitting any child of Elizabeth *en ventre sa mère*. At the date of the settlement no such clause exists, but there is one directing that Francis Ebborn should, for the purpose of taking an interest under the trusts, be considered as the legitimate child of Elizabeth. The question is whether the child *en ventre sa mère* can take the benefit of the settlement. There is not in this settlement anything amounting to a provision that all illegitimate children of Elizabeth and John Kinder are to take; such a provision would only be valid in regard to then existing children; it would not be valid in respect of future-born children. Under this settlement only the offspring of Elizabeth and John are qualified to take, and no illegitimate child is qualified unless it be a child or reputed child of John Kinder. When a lady is lawfully married and has issue, the child is reputed to be her husband's, and legitimate, but there is no similar rule in this case—i.e., that any children born of Elizabeth in the period of her relation with John should be presumed to be his children. The child Francis was in existence at the date of the settlement, and reputed to be John Kinder's child before that time. He was, in fact, reputed to be John Kinder's child from the date of his birth, and being in existence, there is no rule of public policy, so far as I can see, against the benefits provided for him in the settlement. In *Re Shaw, Robinson v. Shaw* (1894, 2 Ch. 573) North J., in a very careful judgment, held that an illegitimate child *en ventre sa mère* at the date of a settlement was not included in the provisions for the children of the father and mother in the settlement, and for the reasons given by North, J., by which I am bound; but, with reluctance, I am compelled to come to the conclusion that the plaintiff cannot take unless, at the date of the settlement, he was either an actual or reputed child of John Kinder. It is a case of hardship, and I should be glad if it were reviewed on appeal.—COUNSEL, Hughes, K.C., and J. E. Harman; H. E. Wright; A. M. W. Wells; Charles Church. SOLICITORS, E. W. Reeves, for Sedgwick, Turner, Oddie, & Sworler, Watford; E. J. H. Carter; Church, Adams, & Prior, for Matthew Arnold, Watford.

(Reported by A. S. OFFÉ, Barrister-at-Law.)

*Re HARRINGTON, DECEASED. WILDER v. TURNER.*

Warrington, J. 14th Oct.

BASTARDY ORDER—ARREARS DUE BY DECEASED PERSON—BASTARDY LAWS AMENDMENT ACT, s. 4.

*On the death of a putative father, arrears due on a bastardy order are irrecoverable.*

In this case, a summons taken out in an administration action, the plaintiff claimed to rank as a creditor against the estate of Charles Douglas Malleson Harrington (who died intestate) in respect of sums due on an affiliation order made by two justices of the borough of Portsmouth on the 4th of September, 1896. The order directed payment of 5s. per week to the mother till the death of or attainment of sixteen years of age by a female child born in 1896. In support of the application it was argued that the claim was a civil one of a contractual nature, that the proceedings in an application for a bastardy order were not in *pœnam*, and that their object was not

to impose a punishment, but to relieve the mother of the parish. Even if the arrears were irrecoverable, in that a statutory remedy was provided, and when provided must be pursued, yet as this statutory remedy was by way of execution during the lifetime of the father, it was of necessity unavailable as to sums accruing after his death, so that the ordinary methods of enforcing a claim under a contractual relationship might be adopted.

WARRINGTON, J., commented on the unanimity of text-book writers in laying down that no such claim could succeed against the estate of a deceased person, and said that in order that any claim could succeed in respect of a debt there must be a sum due recoverable by action. He re-stated the well-known principle of law that if a statutory obligation were created and a statutory provision for its enforcement, such statutory provision should be the means of enforcing the obligation to the exclusion of ordinary remedies. In this case there was no debt, only a statutory obligation ceasing on the death of the intestate, and therefore the claim must be rejected.—COUNSEL, G. F. Hart; E. Nesbitt; H. P. Rashleigh. SOLICITORS, Norris & Martin; Hammond & Richards; Wadeson & Malleson.

(Reported by W. S. Scott, Barrister-at-Law.)

**ATTORNEY-GENERAL v. BIRMINGHAM, &c., DRAINAGE BOARD.**  
Eve, J. 14th Oct. *Half in 4th W. 1st half in 5th W. 1st half in 6th W. 1st half in 7th W. 1st half in 8th W. 1st half in 9th W. 1st half in 10th W. 1st half in 11th W. 1st half in 12th W. 1st half in 13th W. 1st half in 14th W. 1st half in 15th W. 1st half in 16th W. 1st half in 17th W. 1st half in 18th W. 1st half in 19th W. 1st half in 20th W. 1st half in 21st W. 1st half in 22nd W. 1st half in 23rd W. 1st half in 24th W. 1st half in 25th W. 1st half in 26th W. 1st half in 27th W. 1st half in 28th W. 1st half in 29th W. 1st half in 30th W. 1st half in 31st W. 1st half in 32nd W. 1st half in 33rd W. 1st half in 34th W. 1st half in 35th W. 1st half in 36th W. 1st half in 37th W. 1st half in 38th W. 1st half in 39th W. 1st half in 40th W. 1st half in 41st W. 1st half in 42nd W. 1st half in 43rd W. 1st half in 44th W. 1st half in 45th W. 1st half in 46th W. 1st half in 47th W. 1st half in 48th W. 1st half in 49th W. 1st half in 50th W. 1st half in 51st W. 1st half in 52nd W. 1st half in 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## Law Students' Journal.

### Law Students' Societies.

**LAW STUDENTS' DEBATING SOCIETY.**—Oct. 20.—Chairman, Mr. D. J. Kennedy.—The subject for debate was: "That the case of *Re Stewart* (1908, 2 Ch. 251) was wrongly decided." Mr. G. L. Wates opened in the affirmative, Mr. D. S. Cornock seconded in the affirmative; Mr. C. W. Hill opened in the negative, Mr. Skeels seconded in the negative. The following members continued the debate: Messrs. Harnett, Krauss, Pleadwell, Dobson, H. T. Thomson, Dowding, and Kafker. The motion was lost by six votes.

**BIRMINGHAM LAW STUDENTS' SOCIETY.**—Oct. 20.—Chairman, Mr. Harold Eaden.—The following moot point was debated: "That the case of *Lord's Trustee v. Great Eastern Railway Co.* (1908, 2, K. B.) was wrongly decided." The question was argued for the affirmative by Mr. H. F. Bensly, who was supported by Messrs. H. V. Argle, C. H. Morgan, and H. Birkett Barker; and for the negative by Mr. E. H. Clutterbuck, supported by Messrs. H. E. Swallow, F. Le N. Foster, and R. R. C. Yates. After the openers had replied, the chairman summed up, and on putting the question to the meeting the voting resulted in the negative by a large majority. A hearty vote of thanks to the chairman concluded the meeting.

## The Celebration of the Bacon Tercentenary at Gray's-inn.

THE 300th anniversary of the election, on the 17th of October, 1608, of Francis Bacon as treasurer of Gray's Inn was commemorated on Saturday by a luncheon in the hall of the Inn. Mr. DUKE, K.C., the treasurer, presided, and there was a large attendance of distinguished guests connected with literature and the law. After the usual loyal toasts, the Treasurer proposed "The Immortal Memory of Francis Bacon." After referring to the regims of intellectual authority in which Bacon was a master and pioneer, he said it was not in respect of any of those matters, which were public property, that they had asked them there that day to join with them in celebrating that anniversary. It was because for twenty-five of the most difficult years of Bacon's life he was student, he was barrister, he was Bencher, he was the regenerator of that society, and the intimate friend of those who were his fellows in it, and because, during those twenty-five years, Gray's Inn was bound up with the difficulties of his life and with that long period of adversity as no other English place was. It was a strange fate which linked Bacon with that house, where he found a secure foothold when the eye of power regarded him very jealously. His father had been treasurer fifty years before him. That hall had been built during his treasurership. Nicholas Bacon, Cecil, and Walsingham had been students and ancients there before him. Thomas Cromwell had been their predecessor. When Francis Bacon was on the point of leaving Cambridge, and when, in all human probability, the practice of the law, the utility of the law, was to him a matter of entire indifference, just as Nicholas Bacon had entered three sons of greater age, he brought the two younger boys, Anthony and Francis, there, and there together, when Francis was fifteen years of age, they were entered. They knew it could have been little more than a courtesy to the Inn, because in that year Francis Bacon entered upon what seemed to be his destined career in public life in the suite of Sir Amyas Paulet, the Ambassador in Paris. Although Sir Nicholas Bacon chose for his son a master among the young barristers of that society—a master, Richard Barker, whose name was recorded in the judgment upon him of William Cecil, Lord Burghley—they knew that Francis Bacon left the Inn and gained a name and a place for himself in spite of his youth. He embarked upon a career which would have severed him from them had it not been that in 1579 his father's life came to an untimely close. His father's will left him not penniless, but wholly dependent, and it was in those circumstances that Francis Bacon returned there and took the place of Anthony Bacon in his father's old chambers, where No. 1, Gray's-inn-square now stood. It was during those three years which followed what seemed a dire calamity that Francis Bacon came into that hall and devoted himself to a course of exercises which, in that period, made him such a master of the learning of the Common Law of this country that the Benchers of those days, whose names stood high among the judges and advocates of England, when he was not ripe to become a Bencher, called him to that table to sit among the readers; and from that day to the end of his days bound him with an indissoluble tie to that society. It was not until he had been eight years a member of that Bench that he was taken into public employment at all—it was not until then that he came to justify, what no doubt his own knowledge and his training in the law justified, his declaration that in the technicalities of English Common Law he was Coke's equal if not the master. The justification was the struggle between them for mastery for long years, and lawyers knew how abundantly Bacon held his own against that great man—that man in many respects of unmatched greatness in his domain of the law. Bacon found time, when he was preparing his great works, to devote a good deal of attention to the affairs of the society. Few men who had not been engrossed in the affairs of an Inn of Court knew the precise

form which the life of an Inn of Court took in the days of King James. They had there a little commonwealth, governed by custom and free from interference. Bacon came there at a time when to that hall the nobility and gentry of the land came for learning, but when it was still necessary to lay down strict rules as to going armed into hall, as to scuffling and striking and violence and disorder of that kind. Bacon applied himself to strengthening the stringency of the courses of study to which he had come. Bacon's chamber overlooked the gardens. He made them. There had been walks, but no gardens. He enclosed and laid out the fields of the society, and for years after Bacon's time, as Charles Lamb told them, they were a delight to the people of London. Macaulay and Spedding recorded of that period an almost prophetic word of Prince Charles, afterwards King. Apparently he had left Bacon on his way from Gorhambury attended by those friends from whom poverty and adversity had not divided him. He wrote to Buckingham:—"Whatever we may do with this man he will not go out in snuff." Among the shadows of that great age the name of Bacon stood out with fact, public service, and character about it—in spite of all the errors of his time and all the weakness of his nature—which made his name increasingly a treasure of the English race. What he wrote in his will was that he left his memory to the charitable speeches of mankind and foreign nations and to the next age. Three hundred years had gone, and they felt there that day that the time was ripe when they might declare their gratitude to Bacon, when they might challenge the judgment of Englishmen upon the broad view as to the memory and service of Bacon.

The TREASURER, again rising, proposed the toast of "Our Guests."

The AMERICAN AMBASSADOR, in the course of his reply, said that no man ever had a more extraordinary position than Bacon. It had been given to very few men in the world to change the whole intellectual current and tendency of their age and of succeeding ages. The whole effect of what had been called the Baconian philosophy was, according to his own statement of it, to look for fruit. It was essentially practical. As one of his acutest critics had said of him, his philosophy began in observation and it ended in words. The enormous progress that had been made in the centuries since his time, in the development of the empire of mind over matter, received its original impulse from the Baconian philosophy. Surely there never lived a man who had a better right to employ the proud humility in the pathetic bequest that they had just heard—"My name and my memory I leave to the charitable speeches of men, to foreign nations, and to the next age."

There were on view the Baconian MSS. in the Benchers' library, also two volumes of Bacon papers and letters lent by the Archbishop of Canterbury, and other letters lent by the Faculty of Advocates, Edinburgh, and the original MS. of Bacon's declaration to the House of Lords, April 30, 1621.

## Legal News.

### Appointment.

The MASTER OF THE ROLLS has been elected Treasurer of the Honourable Society of Lincoln's-inn for the ensuing year, but he will not enter upon the duties of the office until the 11th of January.

### Changes in Partnerships.

The practice hitherto carried on by Mr. T. ROTHWELL HASLAM, at 47, Moorgate-street, London, under the style or firm of Haslam & Co., and the practice hitherto carried on by Mr. ARTHUR BRODIE SANDERS, M.A. (Oxon.), at 16, King William-street, E.C., have been amalgamated, and Mr. Sanders and Mr. Haslam will in future carry on business in co-partnership at 47, Moorgate-street, under the style or firm of Haslam & Sanders.

### Admissions.

Messrs. Worthington, Evans, Dauney, & Co., 27, Nicholas-lane, E.C., announce that they have admitted Mr. CLEMENT H. GURNEY as a partner in their firm as from the 1st inst. The style of the firm will remain unaltered.

Messrs. Avery & Son, of 34, Finsbury-pavement, and Tottenham and Edmonton, have admitted into partnership Mr. W. T. FAIRBAIRN, who served his articles with Mr. Avery, sen., and who has been associated with them as managing clerk and has assisted in their advocacy practice for some years past. The style of the new firm will be Avery, Son, & Fairbairn, and the offices as hitherto.

### Dissolutions.

ARTHUR JOHN LEES, ROBERT HARRY SMETHURST BUTTERWORTH, and JAMES MARK McDONNELL, solicitors and parliamentary agents (Lees, Butterworth, & McDonnell), Palace-chambers, Bridge-street, Westminster. Sept. 30. So far as regards the said Robert Harry Smethurst Butterworth, who retires from the said firm; the said Arthur John Lees and James Mark McDonnell will continue to carry on the said business in partnership under the style of Lees & Co. [Gazette, Oct. 20.

## General.

It is announced that Mr. Justice A. T. Lawrence has fixed Monday, November 24, for the next sitting of the Railway and Canal Commission at the Royal Courts of Justice.

Channell and Coleridge, J.J., have fixed the following commission days for the autumn assizes on the Northern Circuit:—Manchester, Saturday, November 21; Liverpool, Saturday, December 5.

An extraordinary demand has, says the *Evening Standard*, arisen in the eastern counties for second-hand Bibles. The older and dirtier the better. They are used to manufacture evidence of age in the case of old-age pensions. A woman who produced a Bible to prove her age as being seventy-six omitted to tear out the title-page, which showed the Bible was printed in 1895.

A public introductory lecture on "Comparative Law since Sir Henry Maine's Ancient Law" was given by Professor Sir John Macdonell, C.B., on Wednesday, October 21, at 5.30 p.m., at University College. This lecture will be the first of a public course by Sir John Macdonell on Comparative Law on Wednesdays at 5.30 p.m. The lectures are open to the public without fee or ticket.

The Prince and Princess of Wales have given their patronage to a bazaar to be held in aid of the Incorporated Inns of Court Mission Building Fund, 44-46, Drury-lane, in Lincoln's-inn Hall (by kind permission of the Treasurer and Masters of the Bench), on December 2 and 3. The opening ceremony will be performed on the first day by the Bishop of London at two o'clock, and on the second day by Lady Loretburn at noon. The honorary secretary is Mrs. John Harrington, 7, King's Bench-walk, Temple, E.C., from whom all particulars can be obtained.

Sir Edward Fry, in his address to the students of University College Hospital the other day, had, says a writer in the *Globe*, as a retired judge, some rather unflattering things to say of the medical witness. "You may hear in a railway accident case," he said, "the medical expert on the one side state that the patient is ruined for life, and the expert on the other declare that the patient will be well in a fortnight." Science does not always appear in her best robes in a court of justice. Sir Robert Finlay was once able to show, in dealing with the evidence of two scientific witnesses, that their testimony was inconsistent with what they themselves had written in their published works. "I prefer," he added, "their treatises to their affidavits."

The news that Sir Edward Carson, K.C., and Mr. Rufus Isaacs, K.C., may be called upon to give evidence with reference to a case in which they were both professionally engaged is, says a writer in the *Daily Telegraph*, a reminder of the fact that judges and members of the bar do not often make good witnesses. The worst lawyer-witness of modern days was Lord Herschell. He insisted on making a speech, and could not be prevented from reciting the exact terms of an inadmissible conversation. The late Lord Coleridge, C.J., did far better than Lord Herschell when he found himself being examined and cross-examined. Mr. Justice Grantham, who has figured in the witness-box more than once, may be regarded as an old hand at the game. He shows no trace of nervousness when he is in the hands of counsel. Mr. Justice Bragge Deane on the one occasion when he appeared in the Royal Courts as a witness gave complete satisfaction.

In *Mansell v. Valley Printing Co.* (1908, 2 Ch. 441, 77 L. J. Ch. 397), the Court of Appeal has, says a writer in the current number of the *Law Quarterly Review*, affirmed a rule of great importance in principle, and has done so in the clearest manner. The right to retain the publication of unpublished work of any kind is proprietary; it is independent of property in any tangible material such as a MS. or a canvas; and, being proprietary, though it need not have a corporeal object, it may be infringed without wrongful intention or knowledge. "The element of motive or intention on the part of the defendant is wholly irrelevant," *per* Cozens-Hardy, M.R., at p. 445. To put the point in the shortest form, the right is an absolute right, and the violation of it is a *quasi-trespass*. The case of a trade-mark at common law was different; there the jurisdiction was founded on "passing off," i.e., not on property but on fraud, *per* Farwell, L.J., at p. 488.

At the Ruthin Assizes, on Saturday last, John Rowlands, a solicitor practising at Machynlleth, was charged with fraudulently converting to his own use three sums—namely, £900, £90 and £79—which had been entrusted to him as a solicitor for specific purposes. From the evidence it appeared, says the *Times*, that the prisoner was admitted in 1877, and had since that date carried on his profession at Machynlleth. He held, among other appointments, those of coroner for the western division of Montgomeryshire, and of clerk to the Urban District Council of Machynlleth, to the Rural District Council of Mallwyd, and to the governors of the Machynlleth Intermediate School. In April last the prisoner filed his own petition in bankruptcy, showing a deficiency in his accounts of £11,666 11s. 9d., and during his examination by the Official Receiver the facts of his misappropriation of money entrusted to him were discovered. It further appeared that he had been speculating heavily in slate quarries and mines, and had been in financial difficulties for years. The prisoner gave evidence on his own behalf, and admitted that he had received these various sums, but

contended that he had every intention to pay, and, though pressed for money from time to time, was always in the position to pay by raising money on his own property. He further alleged that his present difficulties arose entirely from his joint liabilities in slate quarry speculations, and that owing to his bankruptcy it had been impossible to realise the value of that property. The prisoner was found Guilty upon the count charging him with misappropriating £900, but Not Guilty on the two other counts, and he was sentenced to three years' penal servitude.

## Court Papers.

## Supreme Court of Judicature.

## ROTA OF REGISTRARS IN ATTENDANCE ON

Mr. Justice	APPRAL COURT	Mr. Justice	Mr. Justice
SWINNEY, HADY.	ROT. 2.	JONES.	JONES.
Monday ... Oct. 26	Mr Farmer	Mr Greswell	Mr Goldschmidt
Tuesday ..... 27	Goldschmidt	Beal	Church
Wednesday ..... 28	Church	Goldschmidt	Synge
Thursday ..... 29	Beal	Church	Theed
Friday ..... 30	Theed	Synge	Tindal King
Saturday ..... 31	Greswell	Theed	Bloxam

  

Mr. Justice	APPRAL COURT	Mr. Justice	Mr. Justice
WARRINGTON.	ROT. 2.	NEVILLE.	PAKER.
Monday ... Oct. 26	Mr Borrer	Mr Theed	Mr Synge
Tuesday ..... 27	Greswell	Tindal King	Theed
Wednesday ..... 28	Beal	Bloxam	Tindal King
Thursday ..... 29	Goldschmidt	Leach	Bloxam
Friday ..... 30	Church	Farmer	Leach
Saturday ..... 31	Synge	Borrer	Farmer

## Circuits of the Judges.

The following Judges will remain in town: BIGHAM, J., PHILLIMORE, J., WALTON, J., and BRAY, J., during the whole of the Circuits; the other Judges till their respective commission days.

AUTUMN ASSIZES, 1908.	OXFORD.	S. EASTERN.	N. WALES AND NORTHERN.	N. EASTERN.	
				W.	E.
Commission Days.	L.C.J. of Eng- land (2) Darling, J. (1)	Grantham, J. (1) Hildy, J. (2) Sutton, J. (1)	Lawrence, J. (1) Lord Coleridge, J. (2)	Carmarthen Buthin	Pickford, J.
Monday, Oct. 12	12 Reading	12 Cambridge	12 Chester (Civ. & Crim.)	12 Durham	12 York
Thursday	13	13 Ipswich	13 Newcastle	13	13 Leeds 2 (Olv. & Ordn.)
Friday	14	14 Norwich	14	14	14
Monday	15	15 Bedford	15	15	15
Tuesday	16	16	16	16	16
Wednesday	17	17	17	17	17
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Wednesday	21	21	21	21	21
Thursday	22	22	22	22	22
Friday	23	23	23	23	23
Saturday	24	24	24	24	24
Wednesday	25	25	25	25	25
Thursday	26	26	26	26	26
Friday	27	27	27	27	27
Saturday	28	28	28	28	28
Wednesday	29	29	29	29	29
Thursday	30	30	30	30	30
Friday	31	31	31	31	31
Saturday	1	1	1	1	1
Monday	2	2	2	2	2
Tuesday	3	3	3	3	3
Wednesday	4	4	4	4	4
Thursday	5	5	5	5	5
Friday	6	6	6	6	6
Saturday	7	7	7	7	7
Wednesday	8	8	8	8	8
Thursday	9	9	9	9	9
Friday	10	10	10	10	10
Saturday	11	11	11	11	11
Wednesday	12	12	12	12	12
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Friday	30	30	30	30	30
Saturday	31	31	31	31	31
Wednesday	1	1	1	1	1
Thursday	2	2	2	2	2
Friday	3	3	3	3	3
Saturday	4	4	4	4	4
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Thursday	6	6	6	6	6
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Saturday	28	28	28	28	28
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Thursday	30	30	30	30	30
Friday	31	31	31	31	31
Saturday	1	1	1	1	1
Wednesday	2	2	2	2	2
Thursday	3	3	3	3	3
Friday	4	4	4	4	4
Saturday	5	5	5	5	5
Wednesday	6	6	6	6	6
Thursday	7	7	7	7	7
Friday	8	8	8	8	8
Saturday	9	9	9	9	9
Wednesday	10	10	10	10	10
Thursday	11	11	11	11	11
Friday	12	12	12	12	12
Saturday	13	13	13	13	13
Wednesday	14	14	14	14	14
Thursday	15	15	15	15	15
Friday	16	16	16	16	16
Saturday	17	17	17	17	17
Wednesday	18	18	18	18	18
Thursday	19	19	19	19	19
Friday	20	20	20	20	20
Saturday	21	21	21	21	21
Wednesday	22	22	22	22	22
Thursday	23	23	23	23	23
Friday	24	24	24	24	24
Saturday	25	25	25	25	25
Wednesday	26	26	26	26	26
Thursday	27	27	27	27	27
Friday	28	28	28	28	28
Saturday	29	29	29	29	29
Wednesday	30	30	30	30	30
Thursday	31	31	31	31	31
Friday	1	1	1	1	1
Saturday	2	2	2	2	2
Wednesday	3	3	3	3	3
Thursday	4	4	4	4	4
Friday	5	5	5	5	5
Saturday	6	6	6	6	6
Wednesday	7	7	7	7	7
Thursday	8	8	8	8	8
Friday	9	9	9	9	9
Saturday	10	10	10	10	10
Wednesday	11	11	11	11	11
Thursday	12	12	12	12	12
Friday	13	13	13	13	13
Saturday	14	14	14	14	14
Wednesday	15	15	15	15	15
Thursday	16	16	16	16	16
Friday	17	17	17	17	17
Saturday	18	18	18	18	18
Wednesday	19	19	19	19	19
Thursday	20	20	20	20	20
Friday	21	21	21	21	21
Saturday	22	22	22	22	22
Wednesday	23	23	23	23	23
Thursday	24	24	24	24	24
Friday	25	25	25	25	25
Saturday	26	26	26	26	26
Wednesday	27	27	27	27	27
Thursday	28	28	28	28	28
Friday	29	29	29	29	29
Saturday	30	30	30	30	30
Wednesday	31	31	31	31	31
Thursday	1	1	1	1	1
Friday	2	2	2	2	2
Saturday	3	3	3	3	3
Wednesday	4	4	4	4	4
Thursday	5	5	5	5	5
Friday	6	6	6	6	6
Saturday	7	7	7	7	7
Wednesday	8	8	8	8	8
Thursday	9	9	9	9	9
Friday	10	10	10	10	10
Saturday	11	11	11	11	11
Wednesday	12	12	12	12	12
Thursday	13	13	13	13	13
Friday	14	14	14	14	14
Saturday	15	15	15	15	15
Wednesday	16	16	16	16	16
Thursday	17	17	17	17	17
Friday	18	18	18	18	18
Saturday	19	19	19	19	19
Wednesday	20	20	20	20	20
Thursday	21	21	21	21	21
Friday	22	22	22	22	22
Saturday	23	23	23	23	23
Wednesday	24	24	24	24	24
Thursday	25	25	25	25	25
Friday	26	26	26	26	26
Saturday	27	27	27	27	27
Wednesday	28	28	28	28	28
Thursday	29	29	29	29	29
Friday	30	30	30	30	30
Saturday	31	31	31	31	31
Wednesday	1	1	1	1	1
Thursday	2	2	2	2	2
Friday	3	3	3	3	3
Saturday					



Under 22 & 23 Vict. cap. 35.

LAST DAY OF CLAIM.

London Gazette.—TUESDAY, Oct. 6.

ADDISON, JOHN, Liverpool Nov 9 Peacock & Co, Liverpool  
 ATKINSON, GEORGE MUNSTER, St Oswald's rd, Fulham, Artist Nov 17 Vandercom & Co, Bush in  
 BARKER, JOSEPH, Liscard, Chester, Coal Merchant Nov 9 Peacock & Co, Liverpool  
 BLACKER, MARY, Truro, Cornwall Oct 17 Carliyon, Truro  
 BLISS, SELINA, Moseley, Worcester Nov 7 Hugger, Birmingham  
 BOWER, JOSEPH, Lester, Innkeeper Oct 24 Willey, Leeds  
 CAMPBELL, DONALD, Dennington Park man, West Hampstead Nov 5 Faithfull & Lear, Thanet House, Temple Bar  
 DEAN, SIR HAROLD ARTHUR, KCSI, Weymouth st Dec 22 Brooks & Co, Godliman st  
 DIAMOND, AMY, East Molesey, Surrey Nov 10 Burton & Son, Blackfriars rd  
 DUCKWORTH, ELIZABETH, Church Crookham, Fleet, Hants Nov 15 Keswick & Co, Suffolk in  
 FICKEN, HANNAH, Clevedon, Somerset Oct 31 Burbidge & Treslair, Clevedon  
 FOX, GROSES, Matlock, Derby Oct 31 Gill, Matlock  
 FOX, ELIZABETH, Matlock Oct 31 Gill, Matlock  
 GROOM, ANELIA ANN, Waterlooville, Hants Nov 16 King & Franckeas, Portsmouth  
 HENRY, NEIL LAMONT, Tooting, Building Society Secretary Nov 10 Burton & Son, Blackfriars rd  
 HILL, SIMON SIDNEY, Langford, Somerset Nov 27 Bobbet Bros, Bristol  
 HORNSBY, EDMUND WILLIAM, Old Change Nov 1 Martin & Co, King st, Guildhall  
 MARTIN, REV WILLIAM NEWCOME, Bentham, Lancs Oct 27 Pegge, Manchester  
 MIDDLEMAS, ANN OBD, Felton, Northumberland Nov 12 Hindmarsh, Alnwick  
 NETTLETON, ELICE BILL, York Nov 10 L & W Thompson, York  
 NEWBY, OLIVER, Dudley, Worcester, Fender Manufacturer Nov 10 Hooper & Fairbairn, Dudley  
 PLUMMER, HARRIET, Fleet, Hants Nov 17 Iliffe & Co, Bedford row  
 REDFORD, THOMAS, Leigh, Lancs, Bank Manager Nov 6 Doonton, Leigh  
 RUGGARD, JANE ELIZA, Scarborough Nov 14 Stileman & Neate, Southampton st, Broughton sq  
 SERGEANT, GEORGE, Bedford Nov 6 Lee-Roberts & Co, Bedford  
 SHAW, SIR EVAN MASSEY, KCB, Belgrave rd Nov 6 Jones, Basinghall & Southgate, Herbert, Stapleton Hall rd, Stroud Green, Commercial Traveller Nov 3 Stevens & Co, Bedford row  
 SPOKE, WILLIAM STOCK, Saffron Walden, Essex Oct 29 Collin & Adams, Saffron Walden  
 SYMONDS, ANN, Truro Oct 17 Carliyon, Truro  
 VERRALL, FRANCIS, Southover, Lewes Nov 14 Drake & Lee, Lewes  
 WALKER, JOHN, Southend on Sea Oct 30 Cooper, Southend on Sea  
 WHITTINGHAM, MARY, Chirbury, Salop Oct 19 Harrisons & Winnall, Welshpool  
 WYATT, JOHN, Bristol, Bacon Curer Oct 24 Cook, Bristol

London Gazette.—FRIDAY, Oct. 9.

BALL, PETER BROWN, Moseley, Worcester, Canadian Trade Commissioner Nov 17 Hooper & Byland, Birmingham  
 BAXTER, GEORGE, Crookes, Yorks Nov 30 J S & C A Whall, Workshops  
 BENDON, GEORGE, Hamilton ter, St John's Wood Nov 18 Grunbaum, Ely pl  
 BULLARD, ELIZABETH, North Walsham, Norfolk Nov 14 Blyth, LL D, Norwich  
 CHAMBERS, CHARLES, Colville rd, Bayswater Nov 23 Morris & Co, Walbrook  
 DASHWOOD, ROBERT JOHN, West Wycombe Park, Bucks Nov 12 Miles, Theobalds rd, Bedford row  
 DAVID, SARAH ANN, High st, Barnes, Licensed Victualler Nov 30 Skewes-Cox & Co, Lancaster pl, Strand  
 EUSTACE, SUSANNA MARY, St Donats rd, New Cross Nov 18 Merchant & Co, Broadway, Deptford  
 FIDLER, CATHERINE, Lane Head, nr Kendal, Westmorland Nov 24 Milne, Kendal  
 GATEHOUSE, CHARLES, Birkenhead Nov 14 Leslie & Co, Liverpool  
 GIBBENS, GEORGE, Hilsborough rd, East Dulwich, Land Agent Nov 9 Gibbens, Broadway, Hammersmith  
 GILLIE, CHARLOTTE ANN, Berwick on Tweed Nov 11 Sanderson & Weatherhead, Berwick on Tweed  
 GOODIN, ALBERT MOSES, Milton, Cambridge, Farmer Nov 20 R C & S Burrows, Cambridge  
 GRAHAM, SOPHIA, Brighton Nov 9 Graham & Wigley, King st  
 GUMMOW, MICHAEL JOHN, Wrexham, Architect Nov 9 Morris & Co, Wrexham  
 HAM, STEPHEN, Sunderland Nov 30 Gee, Newcastle upon Tyne  
 HARTLEY, ANN, Lincoln Nov 7 Danby & Epton, Lincoln  
 HINDLE, THOMAS, Tottington, Lancs Oct 27 Duckworth & Son, Bury  
 HOLLIS, MARY, Derby Nov 16 Verrall & Son, Worthing  
 HOWARD, THOMAS ALBERT, Ashton on Mersey, Traveller Nov 23 Atkinson & Co, Manchester  
 HUME, WASHINGTON, Worton, Wilts Nov 15 Pakeman & Co, Ironmonger in  
 JACKSON, WILLIAM, Ballyingore, Bucks Dec 10 Clarke & Co, Old Broad st  
 JONES, MARGARET, Carlton Vale, Kilburn Nov 12 Davies, Aberystwyth  
 KELLY, MARGARET, Brading, I of W Nov 7 Joyce, Newport, I of W  
 MAD, RICHARD, Chilton, Bucks, Farmer Oct 31 J & T Parrot, Aylesbury  
 MILLS, JOHN, Ormiston rd, Shepherd's Bush Nov 8 Tatham & Co, Queen Victoria st  
 PROUDLOVE, JOHN, Lytham, Lancs Nov 17 Wilding & Son, Blackburn  
 RATCLIFFE, WILLIAM EDWARD, Ryde, I of W, Solicitor Nov 16 Church & Co, Bedford row  
 RIDLEY, THOMAS, Newcastle upon Tyne, Barrister at Law Nov 14 Pybus & Sons, Newcastle upon Tyne  
 SAUNDERS, SUSAN HANNAH, Bognor Nov 16 Hubbard & Co, Cannon st  
 SCOTT, JOHN GUILLEM, Palmerston, North, Wellington, New Zealand, Bank Manager Nov 21 Paines & Co, St Helens pl  
 SIDWELL, HENRY, Stoke, Coventry, Furniture Dealer Nov 14 Woodcock & Co, Coventry  
 SHIPPARD, ROBERT, Nottingham Oct 31 Sharp & Lancaster, Coalville  
 SMALE, RICHARD BILL, Oswestry, Salop Nov 17 Longueville & Co, Oswestry  
 SMITH, BETSY, Barton on Humber, Innkeeper Nov 17 Pye, Great Grimsby  
 SPARKES, JOHN CHARLES LEWIS, Ewhurst, Surrey Nov 20 Vandercom & Co, Bush in  
 STEGGLER, JOHN WILLIAM BILLING, Queen sq, Bloomsbury, Surgeon Nov 9 Truscott & Francis, Bedford row  
 STEPHENSON, APPLEY, Milnary pk, Islington, MD Nov 30 Clapham & Co, Devonshire sq  
 STEWART, MARY, Ilfracombe Nov 16 Farre & Co, Lincoln's inn fields  
 WHEDDICK, WILLIAM, South Duffield, Yorks Nov 2 Hind & Co, Goole  
 WIGGAM, SAMUEL, Lemington, Northumberland, Baker Nov 8 Dickinson & Co, Newcastle upon Tyne  
 WILSON, GEORGE, Felton, Northumberland Nov 30 Webb, Morpeth  
 WYNNE, OWEN SLEANEY, Dolgellau, Merioneth Nov 21 Longueville & Co, Oswestry

London Gazette.—TUESDAY, Oct. 13.

ALCOCK, JOHN, Bentley, Warwick, Farmer Nov 2 Fielders, Atherton  
 ALLS, REV WILLIAM TAPSELL, Liverpool, MA Nov 14 Collins & Co, Liverpool  
 BADGE, CHARLES JAMES, Blackheath Nov 21 Tolley, Queen st, Cheshire  
 BOWMAN, CHARLES, Venetor, I W Nov 2 Urry & Co, Venetor, I W  
 BULLS, CHARLES, Old Palace ter, Richmond Nov 17 Berrrow, Lincoln's inn fields  
 CALVERT, MARY JANE, Moseley, Cheshire Nov 29 Wright & Co, Liverpool  
 CALVERT, THOMAS, Bootle Nov 30 Calvert, Liverpool  
 DAVIES, EDWIN, Birkdale, Lancs Nov 18 Warden & Ashington, Southport  
 DUNN, GEORGE HENRY, Netherthorpe, Dudley, Colliery Proprietor Nov 9 Thompson & Warmsington, Dudley

DYER, THOMAS, Cornhill, Stockbroker Nov 18 Bridgeman & Co, College hill  
 FILSSELL, JULIA ANN, Stanmore Nov 9 Martin & Co, King st, Guildhall  
 FLOWER, HENRY, Coombe Bissett, Salisbury, Farmer Nov 11 King, Wilton, Salisbury  
 GASK, ALFRED, Basford, nr Stoke upon Trent, Bank Cashier Nov 21 Paddock & Sons, Hanley  
 GAYLER, WILLIAM, West Hampstead, Draper Nov 14 Clifton, New st, Lincoln's Inn  
 GLASSAL, THOMAS, Whitehaven, Cumberland, Hatter Nov 14 Brockbank & Co, Whitehaven  
 GREEN, HARRY, Salisbury Nov 20 Wilson & Sons, Salisbury  
 GRANTON, JAMES, Norwich Nov 18 Stevens & Co, Norwich  
 HARRIS, ROBERT ALFRED, Matlock, Chemist Nov 6 Gill, Matlock  
 HELLIWELL, ELIZABETH, Stainland, nr Halifax Nov 23 Longbotham & Sons, Halifax  
 HILL, JANE, Bickerton rd, Ilkington Nov 18 Stileman & Neate, Southampton st, Bloombury sq  
 HOLLOW, SAM, Atherton, Warwick Nov 2 Fielders, Atherton  
 HOLLAND, WILLIAM CHAPLIN, Atherton, Warwick Nov 2 Fielders, Atherton  
 HUNT, EDWARD, Torquay Nov 16 Hamlyn, Torquay  
 JENNINGS, WILLIAM, Farnworth, nr Bolton Oct 27 Monks & Co, Bolton  
 LES, HENRY WILLIAM, Cleveland sq, Hyde Park Nov 24 Bassett & Son, Evershot, Dorchester  
 LOOSE, JAMES, Norwich, Furniture Broker Nov 16 Stevens & Co, Norwich  
 MELLIN, HANNAH JENIMA, Stockton on Tees Oct 1 Bolsover, Stockton on Tees  
 NETTLEFOLD, MARY LOUISA, Hove, Sussex Nov 17 Justice & Pattenden, Bernard st, Ruislip sq  
 PALMER, THOMAS CHARLES, Dallington, Northampton, Tailor Nov 14 Becks & Co, Northampton  
 PEARSON, ANNE, Cotherstone, York Nov 15 Heslop, Barnard Castle  
 POWELL, SELINA, Wornstall, Birkby Nov 12 Thorold & Co, Regent st  
 RANKING, HELEN MARIA, Weston super Mare Nov 24 Ford, Weston super Mare  
 RIDOUT, ELIZA, Wallisdown, Dorset Nov 18 Burt, Bournemouth  
 ROBERTSON, ROBERT, Stretford, Lancs, Plumber Nov 14 Rylands & Sons, Manchester  
 ROBINSON, FREDERICK JOHN, Buntingford, JP Nov 1 Gayton & Hare, Much Hadham, Herts  
 SANDERS, MARY ANN, Layer de la Haye, Essex Nov 30 Marshall & Co, Colchester  
 SCHIEL, HENRY DANIEL, Little Horton, Bradford, Manufacturer Nov 16 Scott & Co, Bradford  
 SQUIRE, ALEXANDER JOHN BALMANNO, Weymouth st, Portland pl Nov 16 Nicholl & Co, Howard st, Strand  
 STOTT, IRVINE, Bradford, Roller Coverer Nov 13 Scott & Co, Bradford  
 STUCHBEY, ELIZABETH, Lavender sweep, Battersea Nov 20 Taylor & Co, Lavender hill  
 THROVER, JAMES FREDERICK, Hevingham, Norfolk, Builder Oct 31 Daynes, Norwich  
 TILLEY, JOSEPH, Darby Hand, nr Dudley, Timber Dealer Nov 7 Davies, Netherthorpe, Dudley  
 TINELLI, ANILCARE, Oxford st Nov 7 Robinson, Great Marlborough st  
 WARD, JOHN HENRY, Leeds, Game Dealer Nov 17 Markland & Co, Leeds  
 WILDING, CATHERINE, Birkenhead Oct 26 Thompson & Co, Birkenhead  
 WESKINNRAFT, CHARLES, Amhurst Park Oct 30 Criddin & Criddin, Newcastle upon Tyne  
 WOOLLEY, JESSE, Borough Market, Southwark, Salesman Nov 2 Simpson & Co, Southwark st, London Bridge  
 WYLAN, EDWARD, Maidstone Nov 14 Cree & Son, Gray's inn sq  
 London Gazette.—FRIDAY, Oct. 16.

ANSELL, LIEUT-COL RICHARD TURBERVILL, Pulborough Nov 23 Fladgate & Co, Craig ct, Charing Cross  
 ARNOLD, JOHN, Berkswell, Warwick, Farmer Dec 1 Smyth & Co, Birmingham  
 ATTWELL, HENRY, Doleberrow Churchill, Somerset Nov 14 March, Axbridge, Somerset  
 ATTWELL, MARY, Doleberrow Churchill, Somerset Nov 14 March, Axbridge, Somerset  
 BAKER, JAMES HOWARD, Plymouth Nov 14 Rastall, London wall  
 BEEDLE, WILLIAM HENRY, Weston super Mare, House Furnisher Dec 1 Baker & Co, Weston super Mare  
 BINGHAM, ROSE ELINOR, Charles st, Mayfair Nov 30 Gasquet & Co, Mincing ln  
 BODDINGTON, WILLIAM SLATER, Manchester, Solicitor Nov 17 Boddington & Co, Manchester  
 BRIMLEY, MARY DAVID, Northampton Oct 21 J & C Markham, Northampton  
 BROADFOOT, JANET DOUGLAS, Birkenhead Nov 18 Reinhardt, Birkenhead  
 BROOKSFORD, JOHN ASKEW, Sheffield, Butcher Nov 16 Smith & Co, Sheffield  
 BURT, JAMES, Hazlett rd, West Kensington Nov 6 Stroud, Holborn viaduct  
 BURTON, ELIZABETH KETURAH, Dulwich Nov 23 Brain & Brain, Reading  
 COLE, REV GEORGE JAMONT, Hawthorne Dene, Bournemouth Nov 20 J & W H Druitt, Bournemouth  
 COLLING, GEORGE, Brockley, Tailor Nov 16 Avery & Wolverson, New Cross rd  
 COVAN, BERNARD, South Shields, Cemetery Superintendent Nov 9 Moore & Armstrong, South Shields  
 CLARK, DAVID, Alnwick, Northumberland, Tobacconist Oct 21 Percy & Son, Alnwick  
 DANCECOCK, CHARLES HARBOURT, St Mary's Abbotts ter, Kensington, Dairyman Nov 25 Batten & Co, Gt George st  
 DOMVILLE, MARY ANNE WYLDS, Great Malvern, Worcester Nov 20 Yonge, Worcester  
 DOYLE, JOHN ANDREW, Crickhowell, Brecon Nov 25 Paine & Co, Chertsey  
 EDDIE, ARTHUR CECIL, New Burlington st, Motor Merchant Nov 30 Taylor, Lincoln's inn fields  
 GREGORY, HENRY, Montes rd, Forest Hill, Tailor Nov 14 Jones, Blackfriars rd  
 HANCOCK, FREDERICK BASTON, Manchester, Twine Merchant Nov 17 Hall, Manchester  
 HOPE, JOHN, Haywards Heath, Builder Nov 15 Hardwick & Blaber, Brighton  
 HOPLEY, DANIEL, Brownhills, nr Walsall, Insurance Agent Nov 16 Ashmole, Lichfield  
 HOTACK, ELIZA, Tunbridge Wells Nov 26 Newton & Co, Moorgate st  
 HUPPARD, ISAAC, Dalton in Furness, Quarryman Oct 31 Eastwood, Blackburn  
 HUMPHREY, GEORGE, Shepherdess walk, City rd, Laundryman Nov 14 Plowman, Bishopsgate st, Without  
 HUNSET, ROSANNA, Twyford Nov 12 Lamb & Co, Reading  
 KENDAL, THOMAS HERBERT, Gatley, nr Cheadle, Chester, Silk Miser Nov 5 Farrar & Co, Manchester  
 KEYWOOD, BENJAMIN, Staines Nov 28 Freeman, Staines  
 LITTLE, LIEUT-JEN HENRY ALEXANDER, CB, Slough Nov 15 Charley & Reynolds, Slough, Bucks  
 LOWE, PHILIP, Radcliffe on Trent, Notts Nov 21 Maples & McCraith, Nottingham  
 MARTIN, MARY ANN JANE, Wembley Dec 31 Woolley & Whitfield, Gt Winchester st  
 MARTIN, WILLIAM SAMUEL, Wembley Dec 31 Woolley & Whitfield, Gt Winchester st  
 MAY, HENRY EWERTHORPE, Welling Nov 17 Rodd, East Stonehouse, Devon  
 MILNE, ELEANOR, Ashford, Middlesex Nov 28 Horne & Co, Staines  
 MORRIS, MARGARET JANE, Merton, nr Guildford Dec 1 Burgoyne & Co, Oxford st  
 MUMFORD, CATHERINE SARAH, Bournemouth Nov 19 Satchell & Co, King st, Cheapside  
 PALMER, ANN, Leamington, Warwick Nov 14 Wright & Co, Leamington  
 PARTINGTON, LAURA, Evesham, Worcester Dec 1 Brych & Co, Evesham  
 POPE, ELIZABETH, Reading Nov 18 Thomas, Woolwich  
 REAY, JOHN, Prudhoe, Northumberland, Railway Clerk Nov 14 Denison & Slater, Newcastle upon Tyne  
 ROBINSON, ELIZABETH ANN, Hawthorn Park, Wilmslow, Chester Nov 20 Minor, Manchester  
 STELL, MARY, Bury, Lancs Nov 21 Howarth & Son, Bury  
 STONE, EDWARD, High Wycombe, Bucks, Chair Manufacturer Nov 20 Parker & High Wycombe  
 STRAFFORD, JOSEPH, Bolton, Cutler Nov 14 Kenyon & Stubbs, Bolton

TAYLOR, HENRY, Hemstal rd, West Hampstead Nov 12 Carter, Regent st	GLOVER, SEPTIMUS JONATHAN, Bishopsgate st, Shipowner Dec 21 Rennoldson, South Shields
THOMAS, ALFRED, Trodridge, nr Tredgar, Licensed Victualler Oct 30 Spencer, Tredgar	HOWARD, ELIZABETH FLANDERS, Maldon, Essex Nov 24 Bridgman & Co, College hill, Canons st
THOMPSON, JAMES, Matlock, Derby, Blacksmith Nov 7 Potter, Matlock Bridge	HUSSEY, ROSENA, Twyford, Berks Nov 12 Lamb & Co, Reading
WALKER, BENJAMIN, Bradford Moor, Bradford Nov 9 Sugden, Bradford	HINLEY, JAMES, Cradley, Worcester Nov 21 Cooksey & Co, Old Hill, Staffs
WARMINGTON, GEORGE SEPTIMUS, Oakcroft rd, Lewisham, Solicitor Nov 14 Edmonds, Bridge row	KENNETT, EMMA, Aldershot Oct 31 Perkins, Guildford
WILKINSON, NEVILLE PRECIVAL, Beeston, Notts Nov 12 Acton & Marriott, Nottingham	KE-SHAW, WILLIAM HENRY, Bradford Dec 1 Gordon Co, Bradford
WYDOWS, CONSTANCE FAWLER, Wembley Dec 31 Woolley & Whittle, Gt Wimchester st	NELSON, JOHN, Hesley, Sheffield Dec 31 Clegg & Sons, Sheffield
YOUNG, JAMES, Brighton Nov 14 Hardwick & Blaber, Brighton	OAKES, WILLIAM HENRY, Sevenoaks Nov 9 Freshfields, Old Jewry
<i>London Gazette.</i> —TUESDAY, Oct. 20.	
ARCHER, JANET, Southsea, Hants Nov 20 Booth & Co, Southampton & Bloomsbury	OLDHAM, FRANCIS HASLAM, Sale Chester, Architect Dec 4 Taylor & Taylor, Man.
BALMER, JOSEPH, Ovenden, nr Halifax Nov 30 Longbotham & Sons, Halifax	ORETON, ANN, Walford Hall Farm, Hampton in Arden, Warwick Oct 31 Mitchell & Chattock, Birmingham
BALME, MARY, Halifax Nov 30 Longbotham & Sons, Halifax	ORETON, JOHN, Walford Hall Farm, Hampton in Arden, Warwick, Farmer Oct 31 Mitchell & Chattock, Birmingham
BOWER, CHARLES, The Bourne, nr Stroud, Glos, Millwright Oct 31 Winterbotham & Sons, Stroud	ELLEN, MARY OWEN, Ael y bryn Dyffryn, Merioneth Nov 30 Ashurst & Co, Throgmorton st
BOWSHIRE, GEORGE, Hanley, Staffs Nov 21 Paddock & Sons, Hanley	PARSONAGE, JOHN, Kinton Green, Olton, Warwick Nov 14 Wright & Marshall, Birmingham
BRACEWELL, JAMES, Gargrave, Yorks Nov 30 Sprake, Acreington	PICK, MARY ANNIE, Gladsmuir rd, Highgate Nov 23 Seagrove & Co, Chancery ln
BUTTS, THOMAS, Leicester Nov 16 Whetstone & Frost, Leicester	RICKARDS, HARRIET, Uxbridge Nov 16 Hanbury & Co, Broad st
CANNING, THE HON LOUISA CHARLOTTE, Frant, Sussex Nov 17 Pearson, Victoria st	STACEY, WILLIAM, Carlton rd, Stroud Green Nov 20 Tewson, Poultry
COLLINS, GEORGE AUGUSTUS, Southampton, Beer Retailer Nov 27 Walker, Southampton	SUTTON, BENJAMIN, Leicester, Tailor Nov 21 Pike, Leicester
COURT, MATILDA SUSANNA, Brodrick rd, Wandsworth Common Dec 1 Corseilis & Berney, High rd, Balham	THOMAS, LAVINIA EMILY, Penarth, Glam Oct 31 Heard & Co, Cardiff
ECCLESTON, ALFRED, Darlaston, Free, Salop, Cattle Dealer Nov 2 Booth-Lee, Whitchurch	WESTON, ELLEN, Dover Nov 25 Mowll & Mowll, Dover
FINCH, JOHN, Topsham, Devon Nov 24 Orchard & Son, Exeter	WOOD, FRANCIS, Northenden, Chester Nov 30 Rylands & Sons, Manchester
GARRETT, SUDLOW, Bournemouth Dec 1 Francis & Calder, Adelaide pl, London Bridge	

## Bankruptcy Notices.

*London Gazette.*—FRIDAY, Oct. 16.

### RECEIVING ORDERS.

BARROWCLOUGH, JOHN SCHOLES, Brighouse Halifax Pet Oct 13 Ord Oct 13	NOTLEY, CHARLES BAREYMORE, Finsbury pawn, Mortgage Broker High Court Pet Sept 19 Ord Oct 14
BATES & SAINSBURY, Borough High st, Stationers High Court Pet Sept 18 Ord Oct 13	PAGE, VICTOR KAUBER, Gray's inn rd, Holborn, Shopfitter High Court Pet Oct 13 Ord Oct 13
BROWN, GEORGE, Burnley, Greengrocer Burnley Pet Oct 13 Ord Oct 13	PETERS, HERBERT JOSEPH, Wood st, Walthamstow, Boot Repaire High Court Pet Oct 13 Ord Oct 13
BUTLER, JOHN, Bruton, Somerset, Gardener Yeovil Pet Oct 13 Ord Oct 13	PAYNE, ARTHUR SELLARS, Westley, Westbury, Salop, Farmer Shrewsbury Pet Oct 10 Ord Oct 14
CARDER, LAURENCE WILFRED, Glyn Mora, Conway, Mining Engineer Bangor Pet Oct 13 Ord Oct 13	PYBUS, JOHN ALBERT, Cottenham, Yorks, Market Gardener Kingston upon Hull Pet Oct 12 Ord Oct 13
CURTIS, WILLIAM JAMES, Leicester, Solicitor Leicester Pet 23 Ord Oct 13	RENNE, HENSCHE, Blackheath Greenwich Pet July 31 Ord Oct 13
DAVIES, PERCY EVAN, Grafton, Salop, Farmer Shrewsbury Pet Oct 10 Ord Oct 10	SANDERSON, HERBERT ARTHUR, Kingston upon Hull, Pork Butcher Kingston upon Hull Pet Oct 12 Ord Oct 12
FATHERS, WALTER JESS, Thornborough, Bucks, Farrier Banbury Pet Oct 14 Ord Oct 14	SCOTT, HENRY, Staff rd, Baker Stafford Pet Oct 12 Ord Oct 12
FAWCETT, SAMUEL, Hunslet, Leeds, Butcher's Assistant Leeds Pet Oct 12 Ord Oct 12	SINTON, GEORGE, Butcherge, Carlisle, Innkeeper Carlisle Pet Oct 13 Ord Oct 13
GILBERT, ALFRED, Caversham, Manufacturer's Agent Heding Pet Oct 13 Ord Oct 13	SMITH, BERTIE, Arnley, Leeds, Coal Dealer Leeds Pet Oct 13 Ord Oct 13
GRANT, GEORGE, Belford, Notts, Boot Dealer Lincoln Pet Oct 8 Ord Oct 13	SELLING, THOMAS ELIZABETH, West Hill, Sydenham Greenwich Pet Aug 14 Ord Oct 13
HARBERSON, SAMUEL, Leeds, Tailor Leeds Pet Oct 13 Ord Oct 13	STEANBAG, HEBES MONTAGUE, Great Winchester st High Court Pet Aug 19 Ord Oct 8
HIGGS, THOMAS, Bradley, nr Buxton, Staffs, Colliery Proprietor Dudley Pet Oct 13 Ord Oct 13	TAYLOR, JOSEPH, Halifax, Builder Halifax Pet Sept 26 Ord Oct 12
HILL, JAMES, Blackburn, Cigar Importer Blackburn Pet Sept 29 Ord Oct 12	WALTERS, ALFRED HENRY, Gilfach Bargoed, Glam, Timberman Merthyr Tydfil Pet Oct 18 Ord Oct 13
HULLER, ERNEST, Stockport, House Furnisher Stockport Pet Oct 18 Ord Oct 13	WILKINSON, EDGAR, Eaton, Norwich, Photographer Norwich Pet Oct 14 Ord Oct 14
JONES, JOHN, Cateddery, Llanfaelog, Anglesey, Plateplayer Bangor Pet Oct 12 Ord Oct 12	Amended Notice substituted for that published in the <i>London Gazette</i> of Oct 9:
KING, MARY, Southsea, Hants Portsmouth Pet Sept 22 Ord Oct 12	MUNZER, MAX, Manchester, Photographic Artist Manchester Pet Oct 9 Ord Oct 6
KIRK, GEORGE, and GEORGE SHAW, Grimsby, Sisters Great Grimsby Pet Oct 13 Ord Oct 13	FIRST MEETINGS.
LAURENCE, JAMES GRICE, Great Grimsby, Grocer Great Grimsby Pet Oct 14 Ord Oct 14	BARROWCLOUGH, JOHN SCHOLES, Brighouse, Draper Oct 27 at 11.30 County Court, Prescott st, Halifax
MAKIN, JOHN THOMAS, Eastwood, Notts, Farmer Derby Pet Oct 10 Ord Oct 10	BATES & SAINSBURY, Borough High st, Stationers Oct 27 at 12 Bankruptcy bldgs, Carey st
MILLINGTON, FREDERICK, Greenwich, Publican Greenwich Pet Sept 26 Ord Oct 18	BUXTON, EDWARD, Hensor, Derby, Farmer Oct 24 at 11 Off Rec, 47, Full st, Derby
MUGFORD, SIDNEY ARTHUR, Balham Hill, Balham Wards worth Pet Oct 13 Ord Oct 18	CORBETT, HENRY, Kingstanding, Staffs, Boot Dealer Oct 26 at 11 Off Rec, 190, W'lv'hampton st, Dudley
NEEDLER, ARTHUR, Sutton, Yorks Kingston upon Hull Pet Oct 13 Ord Oct 13	CURTIS, WILLIAM JAMES, Leicester, Solicitor Oct 27 at 12 Off Rec, 1, Berriedge st, Leicester
NICHOLLS, HENRY JOHN, Strand, Tailor High Court Pet Oct 13 Ord Oct 18	DAVIES, PERCY EVAN, Grafton, Salop, Farmer Oct 24 at 2.30 Off Rec, 22, Swan Hill, Shrewsbury

NOTLEY, CHARLES BAREYMORE, Finsbury pawn, Mortgage Broker High Court Pet Sept 19 Ord Oct 14	PAGE, VICTOR KAUBER, Gray's inn rd, Holborn, Shopfitter Oct 26 at 12 Bankruptcy bldgs, Carey st
PAGE, VICTOR KAUBER, Gray's inn rd, Holborn, Shopfitter High Court Pet Oct 13 Ord Oct 13	PETERS, HERBERT JOSEPH, Wood st, Walthamstow, Boot Repaire Oct 26 at 12 Bankruptcy bldgs, Carey st
PETERS, HERBERT JOSEPH, Wood st, Walthamstow, Boot Repaire High Court Pet Oct 13 Ord Oct 13	PHILLIPS, HENRY SIMON, Oxford rd, Gunnersbury, Company Promoter Oct 27 at 12 Off Rec, 14, Bedford row
PYBE, ARTHUR, Hensor, Derby, Farmer Oct 24 at 11 Off Rec, 47, Full st, Derby	PORTER, WALTER, Bound Oak, Staffs, Bak r Oct 27 at 11.30 Off Rec, 189, Wolverhampton st, Dudley
RENNIE, HENSCHE, Blackheath Greenwich Pet July 31 Ord Oct 13	PYBUS, JOHN ALBERT, Cottenham, Yorks, Market Gardener Oct 24 at 11 Off Rec, York City Bank chmbs, Longgate, Hull
SANDERSON, HERBERT ARTHUR, Kingston upon Hull, Pork Butcher Kingston upon Hull Pet Oct 12 Ord Oct 12	PYTHIE, WILLIAM JOHN, Woodton, Norfolk, Farmer Oct 24 at 12 Off Rec, 8, King st, Norwich
SCOTT, HENRY, Staff rd, Baker Stafford Pet Oct 12 Ord Oct 12	RENNE, HENSCHE, Blackheath Greenwich Pet July 31 Ord Oct 13
SINTON, GEORGE, Butcherge, Carlisle, Innkeeper Carlisle Pet Oct 13 Ord Oct 13	ROBERTSON, JAMES, Brighton, Printer's Manager Oct 26 at 11 Off Rec, 4, Pavilion bldgs, Brighton
SMITH, BERTIE, Arnley, Leeds, Coal Dealer Leeds Pet Oct 13 Ord Oct 13	ROSENBERG, BARNET, Brighton, Boarding house Keeper Oct 26 at 11.30 Off Rec, 4, Pavilion bldgs, Brighton
SELLING, THOMAS ELIZABETH, West Hill, Sydenham Greenwich Pet Aug 14 Ord Oct 13	SIMMONS, WILLIAM, Blackpool, Cycle Dealer Oct 24 at 11 Off Rec, 13, Winskley st, Preston
STEANBAG, HEBES MONTAGUE, Great Winchester st High Court Pet Aug 19 Ord Oct 8	SMITH, BERTIE, Arnley, Leeds, Coal Dealer Oct 26 at 12 Off Rec, 24, Bond st, Leeds
TAYLOR, JOSEPH, Halifax, Builder Halifax Pet Sept 26 Ord Oct 12	SELLING, THOMAS ELIZABETH, West Hill, Sydenham Oct 27 at 12 Off Rec, 132, York rd, Westminster Bridge
WALTERS, ALFRED HENRY, Gilfach Bargoed, Glam, Timberman Merthyr Tydfil Pet Oct 18 Ord Oct 13	
WILKINSON, EDGAR, Eaton, Norwich, Photographer Norwich Pet Oct 14 Ord Oct 14	

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STENBERG, HEDER MONTAGUE, Great Winchester st Oct 28 at 12 Bankruptcy bldgs, Carey st  
 STEVENS, FRANCIS HEWITT, Gravesend, Political Sub-Agent Nov 2 at 12.30 115, High st, Rochester  
 TAYLOR, JOSEPH, Halifax, Builder Oct 27 at 10.45 County Court, Proscott st, Halifax  
 WHITMAN, RICHARD, Colne, Lancs, Jeweller Oct 24 at 10.30 Off Rec, 18, Winckley st, Preston

## ADJUDICATIONS.

ANDERSON, ROBERT, Victoria st, Architect High Court Pet Aug 4 Ord Oct 13  
 ATTEN, WILLIAM HENRY, Bristol, Yeast Importer Bristol Pet Sept 21 Ord Oct 10  
 BARROWCLIFFE, JOHN SCHOLES, Brighouse Halifax Pet Oct 13 Ord Oct 13  
 BROWN, GEORGE, Hull, Greengrocer Burnley Pet Oct 13 Ord Oct 13  
 BUTLER, JOHN, Bruton, Somerset, Gardener Yeovil Pet Oct 13 Ord Oct 13  
 CHOLESTOV, SAMUEL ROBERT, Poulton le Fylde, Insurance Agent Preston Pet Sept 3 Ord Oct 12  
 DAVIS, EDWARD WILLIAM, Harrogate, Accountant York Pet Sept 15 Ord Oct 14  
 FATHERS, WALTER JESS, Thorneborough, Bucks, Farrier Banbury Pet Oct 14 Ord Oct 14  
 FAWCETT, SAMUEL, Hunslet, Butcher's Assistant Leeds Pet Oct 12 Ord Oct 12  
 GRANT, GEORGE, Retford, Notts, Boot Dealer Lincoln Pet Oct 3 Ord Oct 13  
 HABERBERG, SAMUEL, Leeds, Tailor Leeds Pet Oct 13 Ord Oct 13  
 HABERBERG, CHARLES, Birmingham, Heating Engineer Birmingham Pet Oct 9 Ord Oct 12  
 HARVEY, JOHN, Westbury Park, Bristol, Merchant Bristol Pet Sept 19 Ord Oct 13  
 HIGGINS, THOMAS, Bradley, nr Bilton, Staffs, Colliery Proprietor Dudley Pet Oct 13 Ord Oct 13  
 HILL, EDWARD COLESTON, Bedminster, Bristol, Insurance Agent Bristol Pet Sept 14 Ord Oct 14  
 HOULDRIDGE, JAMES, Liverpool, Coach Builder Liverpool Pet Sept 28 Ord Oct 14  
 HULME, ERNEST, Stockport, House Furnisher Stockport Pet Oct 18 Ord Oct 18  
 JONES, JOHN, Catedral, Llanfyllog, Anglesey, Flateayer Bangor Pet Oct 12 Ord Oct 12  
 KENWORTHY, CHARLES HENRY HAROLD, and CLAUDE ROBERT KENWORTHY, Caterham Valley, Surrey, Builders Croydon Pet Aug 15 Ord Oct 12  
 KIRK, GEORGE, and GROSES SHAW, Grimsby, Slaters Great Grimsby Pet Oct 18 Ord Oct 13  
 LAWRENCE, JAMES GRIFFIN, Great Grimsby, Grocer Great Grimsby Pet Oct 14 Ord Oct 14  
 MEAKIN, JOHN THOMAS, Eastwood, Notts, Farmer Derby Pet Oct 10 Ord Oct 10  
 MUGFORD, SYDNEY ARTHUR, Balham hill, Balham Wandsworth Pet Oct 19 Ord Oct 13  
 NEEDLER, ARTHUR, Sutton, Yorks, Kingston upon Hull Pet Oct 13 Ord Oct 13  
 NICHOLLS, HENRY JOHN, Strand, Tailor High Court Pet Oct 13 Ord Oct 13  
 PETHES, HUBERT JOSEPH, Wood st, Walthamstow, Boot Repairer High Court Pet Oct 18 Ord Oct 18  
 PYBUS, JOHN ALBERT, Cottenham, Yorks, Market Gardener Kingston upon Hull Pet Oct 12 Ord Oct 12  
 SANDERSON, HERBERT ARTHUR, Kingston upon Hull, Pork Butcher Kingston upon Hull Pet Oct 12 Ord Oct 12  
 SCOTT, HENRY, Stafford, Baker Stafford Pet Oct 12 Ord Oct 12  
 SINTON, GEORGE, Carlisle, Innkeeper Carlisle Pet Oct 13 Ord Oct 13  
 SMITH, BERTIE, Armley, Coal Dealer Leeds Pet Oct 13 Ord Oct 13  
 SMITH, HENRY GEORGE, Nottingham, Warehouseman Nottingham Pet Sept 26 Ord Oct 14  
 STUBBS, JOSEPH WILLIAM, Lordship in, East Dulwich, Jeweller High Court Pet Aug 26 Ord Oct 12  
 TISKER, HENRY, Ainsdale, Lancs, Stationer Liverpool Pet Oct 3 Ord Oct 14  
 WALTERS, ALFRED HENRY, Gilfach Barged, Glam, Timberman Merthyr Tydfil Pet Oct 13 Ord Oct 13  
 WATKINS, WALTER, Astwood, Worcester Worcester Pet Sept 21 Ord Oct 13  
 WILKINSON, COLIN TAYLOR, Cambridge gdns, Notting Hill High Court Pet July 15 Ord Oct 12  
 WILKINSON, EDGAR, Eaton, Norwich, Photographer Norwich Pet Oct 14 Ord Oct 14

London Gazette.—TUESDAY, Oct 20.

## RECHIVING ORDERS.

ALLEN, FREDERICK, Corsham, Wilts, Grocer and Baker Bath Pet Oct 10 Ord Oct 16  
 BEVAN, LAVI, Pantyffynnon, Carmarthen, Farmer Carmarthen Pet Sept 21 Ord Oct 14  
 BOURNE, SALOME, Derby, Refreshment Contractor Derby Pet Oct 17 Ord Oct 17  
 BRAKE, WALTER, Moorside, Somerset, Farmer Bridgewater Pet Oct 5 Ord Oct 15  
 BREWER, FREDERICK JOHN, Morecambe, Ironmonger Preston Pet Oct 19 Ord Oct 17  
 BROADBRIDGE, MARY ANN, Epsom, Boot Maker Croydon Pet Oct 17 Ord Oct 17  
 BROOKS, WILLIAM, Norwich, Coal Dealer Norwich Pet Oct 17 Ord Oct 17  
 COCKAYNE, ERNEST, Walsall, Bridle Cutter Walsall Pet Oct 15 Ord Oct 15  
 COCKBURN, BERTHAR, Redcar, Yorks, Chemist Middlebrough Pet Oct 15 Ord Oct 15  
 DOWING, WILLIAM WESTBURY, Scarborough, Draper's Assistant Scarborough Pet Oct 15 Ord Oct 15  
 DOWNE, SAM, Crewkerne, Engineer Yeovil Pet Oct 16 Ord Oct 16  
 EARLAND, WILLIAM HENRY, Heath rd, Harrow, Builder St Albans Pet Oct 13 Ord Oct 13  
 EVANS, ALBERT EDWARD, Japan crescent, Stroud Green, Provision Merchant High Court Pet Aug 15 Ord Sept 5

FAIRES, EDWARD WILLIAM, and SIDNEY OSWALD ROLPH, Newmarket, Tailors Cambridge Pet Sept 29 Ord Oct 17  
 GROVER, ALFRED, Copthall chmrs, Merchant High Court Pet July 9 Ord Oct 16  
 HURD, ARTHUR LEONARD, Leeds, Jeweller Leeds Pet Oct 14 Ord Oct 14  
 JENNINGS, GILBERT DELAHOTY, Chertsey, Surrey, East India Merchant High Court Pet July 8 Ord Aug 7  
 JONES, ALBERT, Aberdare, Glam, Fruiterer Aberdare Pet Oct 3 Ord Oct 17  
 JONES, WILLIAM, Tyngs, Waenfawr, Carmarvon, Farmer Bangor Pet Oct 16 Ord Oct 16  
 KAUFMAN, ALFRED, Exeter rd, Bredbury, Boot Maker High Court Pet Aug 26 Ord Oct 16  
 KAUFMAN, SIDNEY CHARLES, Mare st, Hackney High Court Pet Aug 28 Ord Oct 16  
 KNOWLES, WILLIAM, Bexhill, Sussex, Brickmaker Hastings Pet Oct 17 Ord Oct 17  
 LAWSON, ROBERT, Avenue rd, Isleworth, Fancy Bazaar Dealer Brentford Pet Oct 14 Ord Oct 14  
 McCANLIS, GEORGE, Milton next Gravesend Rochester Pet Oct 26 Ord Oct 16  
 MARSH, A, Portdown av, Golders Green, Builder High Court Pet Sept 21 Ord Oct 14  
 MORDICAL, LAZARUS, Bancroft rd, Mile End, Fancy Good Dyer High Court Pet Sept 17 Ord Oct 14  
 MORGAN, MORGAN, Bridgend, Collier Cardiff Pet Oct 13 Ord Oct 13  
 OVER, SARAH, Leamington, Baker Warwick Pet Oct 15 Ord Oct 15  
 PATTEN, GEORGE, Asprey's, Tobacconist Blackburn Pet Sept 15 Ord Oct 7  
 PEPPER, MATTHEW, Marton, nr Ulverston, Lancs Barrow in Furness Pet Oct 15 Ord Oct 15  
 PRITCHARD, JOHN GRIFFITHS, Rhosyrfan, Llanwda, Carmarthen, Quarryman Bangor Pet Oct 18 Ord Oct 18  
 RAMSEY, HARRY, Bradford, Farmer Bradford Pet Oct 17 Ord Oct 17  
 SANDERSON, HENRY WILLIS, Towcester, Northampton, Licensed Victualler Oct 28 at 11 Off Rec, 32, Bridge st, Northampton  
 SCOTT, HENRY, Stafford, Baker Oct 28 at 11.30 Off Rec, King st, Newcastle, Staffs  
 SHARPE, JOHN HERON, Folkestone, Fly Proprietor Oct 28 at 10.30 Off Rec, 64, Castle st, Canterbury  
 SINTON, GEORGE, Carlisle, Innkeeper Oct 30 at 11 34, Fisher st, Carlisle  
 STOGOL, WILLIAM SAMUEL, Folkestone, Restaurant Proprietor Oct 28 at 2 Off Rec, 26, Princess st, Ipswich  
 STYLES, SARAH, Saltley, Birmingham, Dairy Keeper Oct 30 at 12 191, Corporation st, Birmingham  
 TINKLER, HENRY, Southport, Stationer Oct 29 at 2.30 Off Rec, 35, Victoria st, Liverpool  
 TOYE, JOHN, Ashmounth rd, Horsey in, Grocer Oct 29 at 11 Bankruptcy bldgs, Carey st  
 WALTERS, ALFRED HENRY, Gilfach Barged, Glam, Timberman Oct 28 at 12 Off Rec, County Court, Townhall, Merthyr Tydfil  
 WHITERHEAD, WILLIAM HENRY, Horton, Bradford, Joiner Oct 29 at 11.30 Off Rec, 12, Duke st, Bradford  
 WHITTAKER, WALTER, Buxton rd, Thornton Heath, Baker Oct 28 at 11.30 182, York rd, Westminster Bridge  
 WILKINSON, EDGAR, Norwich, Photographer Oct 28 Off Rec, 8, King st, Norwich  
 WILLEY, SIDNEY J H, Adam st, Strand, Engineer Oct 29 at 12 Bankruptcy bldgs, Carey st

## ADJUDICATIONS.

ALLEN, FREDERICK, Corsham, Wilts, Grocer Bath Pet Oct 16 Ord Oct 16  
 ATKINSON, CHARLES HENRY, High Garrett, Brinsford, Essex, Licensed Victualler Chelmsford Pet July 22 Ord Oct 16  
 BOURNE, SALOME, Derby, Refreshment Contractor Derby Pet Oct 17 Ord Oct 17

## READY 31st OCTOBER.

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BREWER, FREDERICK JOHN, Morecambe, Ironmonger Preston. Pet Oct 12. Ord Oct 17.  
 BROOKS, WILLIAM, Norwich, Coal Dealer. Norwich Pet Oct 17. Ord Oct 17.  
 COCKAYNE, ERNEST, Walsall, Bridle Cutter. Walsall Pet Oct 13. Ord Oct 15.  
 COCKBURN, BRITON, Redcar, Yorks, Chemist. Middlebrough Pet Oct 15. Ord Oct 15.  
 DOWNING, WILLIAM WESTBY, Scarborough, Draper's Assistant. Scarborough Pet Oct 15. Ord Oct 15.  
 DOWNS, SAM, Crewkerne, Engineer. Yeovil Pet Oct 16. Ord Oct 16.  
 GOODRICH, ALFRED MORRIS, Highbury New pk, Tailor. High Court Pet Sept 12. Ord Oct 15.  
 HUED, ARTHUR LEONARD, Leeds, Jeweller. Leeds Pet Oct 14. Ord Oct 14.  
 JONES, WILLIAM, Tyndykes, Walsall, Farmer. Bagger Pet Oct 18. Ord Oct 18.  
 KNOWLER, WILLIAM, Bexhill, Brickmaker. Hastings Pet Oct 17. Ord Oct 17.  
 LAWSON, ROBERT, Avenue rd, Isleworth, Fancy Bazaar Dealer. Brentford Pet Oct 14. Ord Oct 14.  
 McCAMIS, GEORGE, Milton next Gravesend, Rochester Pet Oct 16. Ord Oct 16.  
 MILLINGTON, FREDERICK, Greenwich, Publican. Greenwich Pet Sept 28. Ord Oct 16.  
 MORGAN, MORGAN, Bridgend, Collier. Cardiff Pet Oct 13. Ord Oct 13.  
 OVER, SARAH, Leamington, Baker. Warwick Pet Oct 15. Ord Oct 15.  
 OWEN, JOHN WARDEN, Wellington, Salop, Tailor. Madeley Pet Sept 24. Ord Oct 16.  
 PAGE, HENRY ERNEST, Goldhawk rd, Shepherd's Bush, Fried Fish Monger. High Court Pet Sept 9. Ord Oct 16.  
 PATTEN, GEORGE, Accrington, Tobacconist. Blackburn Pet Sept 15. Ord Oct 14.  
 PENDLETON, GEORGE EDMUND, Fallowfield, Manchester, Plumber. Manchester Pet Oct 16. Ord Oct 30.  
 PEPPER, MATTHEW, Bell Hill, Marton, nr Ulverston, Lancs, Miner. Barrow in Furness Pet Oct 15. Ord Oct 15.  
 PRITCHARD, JOHN GRIFFITH, Tyddyn Heilyn, Rhosyrfaen, Llanwda, Carmarvon, Quarryman. Bangor Pet Oct 13. Ord Oct 13.  
 PEYCE, ARTHUR SELLAR, Westley, Westbury, Salop, Farmer. Shrewsbury Pet Oct 10. Ord Oct 17.  
 RAMSDEN, HARRY, Bradford, Farmer. Bradford Pet Oct 17. Ord Oct 17.  
 RODGER, DANIEL WALLACE, and BRUCE HAMILTON, Cannon st, Merchants. High Court Pet Sept 30. Ord Oct 15.  
 SANDERSON, HENRY WILLIS, Worcester, Northampton, Licensed Victualler. Northampton Pet Oct 15. Ord Oct 15.  
 SAVIDGE, JOHN, Bridgend, Slaughterman. Cardiff Pet Oct 14. Ord Oct 14.  
 SMITH, CHARLES, and GEORGE MORREY, Portsmouth, Builders. Portsmouth Pet Sept 29. Ord Oct 15.  
 SOUTHALL, WILLIAM, Stourport, Worcester, Well Sinker. Kidderminster Pet Oct 14. Ord Oct 14.  
 STENBERG, HERBERT MONTAIGNE, Great Winchester st, High Court Pet Aug 19. Ord Oct 15.  
 TELLING, ELIJAH, Newport, Mon, Shoemaker. Newport, Mon Pet Oct 17. Ord Oct 17.  
 THOMAS, ARTHUR HUMPHREY, Ipswich, Butcher. Colchester Pet Oct 16. Ord Oct 16.  
 THOMPSON, WILLIAM OSWELL, Emsworth, Hants. Portsmouth Pet Sept 15. Ord Oct 15.  
 WHITEHEAD, WILLIAM HENRY, Horton, Bradford, Joiner. Bradford Pet Oct 17. Ord Oct 17.  
 Amended Notice substituted for that published in the London Gazette of Oct 13:  
 STYLES, SARAH, Saltley, Birmingham. Birmingham Pet Oct 9. Ord Oct 9.

## INFORMATION WANTED.

RE GEORGE LAFFAN, Deceased.—Will the solicitors or persons recently inquiring for Miss Emily Street at West Hampstead kindly now communicate on the subject with the undersigned, her solicitor, Geo. E. SOLOMON, 46, Narcissus-road, West Hampstead, N.W.

GRESHAM LECTURES.—DR. BLAKE ODGERS, K.C., Gresham Professor of Law, will deliver Four Lectures on "THE RIGHTS OF THE PUBLIC," on October 27th, 28th, 29th, and 30th, at 6 p.m., in Gresham College, Basinghall-street. ADMISSION FREE to MEN AND WOMEN.

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To be opened at 2 p.m. on December 2nd and by the Right Hon. and Right Rev. the LORD BISHOP OF LONDON, and on THURSDAY, December 3rd, at 13 o'clock, by LADY LOREBURN.

The Hon. Sec. is Mrs. John Harrington, 7, King's Bench-walk, Temple, E.C., from whom all particulars can be had.

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The next Half-Yearly Election will be held on Thursday, November 28th, at the Cannon-street Hotel, when 20 infants will be elected, viz., 13 boys and eight girls. The chair will be taken at 11 o'clock precisely.

ANNIVERSARY DINNER.—The Committee have much pleasure in announcing that Alderman SIR GEORGE WYATT TRUSCOTT, Lord Mayor Elect (supported by Mr. Alderman and Sheriff Hanson and Mr. Sheriff Baddeley), has kindly consented to preside at the Anniversary Dinner, which will be held on Wednesday, December 16th, at the Whitehall Rooms, Hotel Metropole. Gentlemen willing to act as Stewards are requested to communicate with the Secretary.

This Institution maintains, clothes, and educates nearly 450 children from infancy until 16 years of age. SUBSCRIPTIONS AND DONATIONS ARE GREATLY NEEDED.

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## GENERAL INDEX.

For Classified Articles, see Appointments ; Correspondence ; Current Topics ; Societies and Companies ; Leading Articles ; New Orders, Rules, &c. ; Obituary.

### APPOINTMENTS.

Abdur Rahim, appointed Judge of High Court at Madras, 704  
Adkins, W. R. D., appointed Junior Counsel to Post Office on Midland Circuit, 304  
Austen-Cartmell, James, appointed Junior Counsel to Inland Revenue, etc., 500  
Bosanquet, Sir F., elected Master of Library of High Court, 120  
Broomfield, J. C., appointed District Probate Registrar at Liverpool, 338  
Byrne, W. P., elected Bencher of Gray's-inn, 484  
Carson, K. C., elected Bencher of Lincoln's-inn, 32  
Coles, E. H., appointed Comptroller of War Department Lands, 380  
Cozens-Hardy, M. R., elected Treasurer of Lincoln's-inn, 775  
Crisp, F., received honour of Knighthood, 49  
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Dugdale, K. C., elected Treasurer of Inner Temple, 80  
Duke, K. C., elected Treasurer of Gray's-inn, 80  
Evans, Sir S. T., elected Bencher of Middle Temple, 248  
Eve, K. C., appointed Judge of High Court, 120  
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Giffard, K. C., elected Keeper of Black Books at Lincoln's-inn, 32  
Gill, A. E., appointed a Metropolitan Police Magistrate, 432  
Glyn, K. C., elected Bencher of Middle Temple, 62  
Hamilton, K. C., elected Bencher of Middle Temple, 62  
Hodgson, B. T., appointed Secretary to Lunacy Commissioners, 248  
Holland, K. C., elected Bencher of Lincoln's-inn, 32  
Ingpen, K. C., elected Bencher of Middle Temple, 62  
Jelf, E. A., appointed a Revising Barrister on South-Eastern Circuit, 568  
Kershaw, L. W., appointed Assistant Registrar to Criminal Appeal Court, 530  
Knocker, R., appointed Registrar of Cinque Ports, 227  
Lawes, E. T. H., appointed Recorder of Salisbury, 568  
Lewis, A., appointed Chairman of Carmarthenshire Quarter Sessions, 646  
Lloyd George, David, appointed Chancellor of the Exchequer, 432  
Madge, W. H., appointed Assistant Solicitor to Swansea Borough, 266  
Marshall, F. E., appointed Coroner for Oxford University, 519  
Master of the Rolls elected Treasurer of Lincoln's-inn, 856  
Mathews, Sir C., appointed Director of Public Prosecutions, 605  
Maund, A. A., appointed Under-Sheriff of Worcester, 49  
Morgan, K. C., appointed Recorder of Swansea, 284  
Oliver, A. M., appointed Town Clerk of Newcastle-on-Tyne, 136  
Packard, E. T., appointed Puisne Judge of Southern Nigeria, 646  
Paget, K. C., elected Bencher of Inner Temple, 500  
Palmer, F. B., received the honour of Knighthood, 49  
Phillimore, Mr. Justice, elected Treasurer of Middle Temple, 80  
Rawlins, K. C., placed on Commission of Peace for County of London, 646  
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Smith, Lucie, appointed Chief Justice of Trinidad, 704  
Smith, T. S., appointed Puisne Judge of Straits Settlements, 14  
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Stephens, K. C., elected Dean of the Chapel, Lincoln's-inn, 32  
Stephenson, Guy, appointed Assistant Director of Public Prosecutions, 605  
Tennyson, C. B. L., appointed Counsel to Office of Works, 500  
Townshend, C. J., appointed Chief Justice of Nova Scotia, 32  
Trotter, W. F., appointed Professor of Law in Sheffield University, 646  
Vaughan-Williams, L. J., elected Master of the Walks, Lincoln's-inn, 32  
Wedderburn, K. C., elected Bencher of Inner Temple, 500  
Whiteley, G. T., appointed Clerk to Croydon Justices, 246  
Wilberforce, H. W. W., appointed Recorder of Bradford, 519  
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# STATUTES.

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## CHAPTER 1.

[Consolidated Fund (No. 1) Act, 1908.]

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand nine hundred and eight and one thousand nine hundred and nine.

[27th March 1908.]

## CHAPTER 2.

[Army (Annual) Act, 1908.]

An Act to provide, during Twelve Months, for the Discipline and Regulation of the Army.

[14th April 1908.]

## CHAPTER 3.

[Prosecution of Offences Act, 1908.]

An Act to amend the Prosecution of Offences Acts, 1879 and 1884. [18th June 1908.]

Be it enacted, &c.:

1. *Offices of Director of Public Prosecutions and Treasury Solicitor to be Separate.*—(1) The provisions of section two of the Prosecution of Offences Act, 1884 [47 & 48 Vict. c. 58], which unite the office of Director of Public Prosecutions with that of the Treasury Solicitor, shall cease to have effect as from a date to be fixed by the Treasury, not being more than one month after the passing of this Act, and the Secretary of State may appoint the Director of Public Prosecutions, and may also appoint such number of assistant directors as the Treasury sanction.

(2) There shall be paid to the Director of Public Prosecutions, and to any assistants so appointed, such salaries or remuneration as the Treasury may determine.

(3) All such salaries and remuneration, and any expenses incurred in the execution of the duties of Director of Public Prosecutions which are not otherwise provided for, shall be paid out of moneys provided by Parliament.

(4) A person shall not be appointed to be Director of Public Prosecutions unless he is a barrister or solicitor of not less than ten years' standing, and a person shall not be appointed to be an Assistant Director of Public Prosecutions unless he is a barrister or solicitor of not less than seven years' standing.

(5) An Assistant Director of Public Prosecutions may do any act or thing which the Director of Public Prosecutions is required or authorised to do by or in pursuance of any Act of Parliament or otherwise.

2. *Miscellaneous Amendments.*—(1) The regulations under the Prosecution of Offences Act, 1879 [42 & 43 Vict. c. 22], shall provide for the Director of Public Prosecutions taking action in cases which appear to him to be of importance or difficulty, or which from any other reason require his intervention.

(2) Section six of the Prosecution of Offences Act, 1879, which relates to the proceedings on prosecutions which the Director of Public Prosecutions has abandoned, shall cease to have effect.

(3) Nothing in the Prosecution of Offences Acts, 1879 and 1884, or in this Act, shall preclude any person from instituting or carrying on any criminal proceedings, but the Director of Public Prosecutions may undertake at any stage the conduct of those proceedings if he thinks fit.

(4) It is hereby declared that the provisions of any Act requiring or authorising any court to make an order for the payment to the prosecutor of any expenses of or incidental to the prosecution of any offence apply with respect to the payment of those costs to the Director of Public Prosecutions as they apply with respect to the payment of those costs to a private prosecutor.

(5) The Director of Public Prosecutions shall be substituted for the solicitors of Her Majesty's Treasury in section forty-two of the Coinage (Offences) Act, 1861 [24 & 25 Vict. c. 99] (which relates to costs of prosecutions).

3. *Repeal and Short Title.*—(1) The enactments mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

(2) This Act may be cited as the Prosecution of Offences Act, 1908, and the Prosecution of Offences Acts, 1879 and 1884, and this Act may be cited together as the Prosecution of Offences Acts, 1879 to 1908.

## SCHEDULE.

[Section 3.]

### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
42 & 43 Vict. c. 22.	The Prosecution of Offences Act, 1879.	The third paragraph of section two, beginning with the words "The regulations" and ending at the end of the section. Section six. In section seven, the following words at the commencement of the section, "Nothing in this Act shall interfere with the right of any person to institute, undertake, or carry on any criminal proceeding." Section two, as from the date fixed by the Treasury for the purpose.
47 & 48 Vict. c. 58.	The Prosecution of Offences Act, 1884.	

## CHAPTER 4.

[Patents and Designs Act, 1908.]

An Act to explain section ninety-two of the Patents and Designs Act, 1907.

[1st August 1908.]

Be it enacted, &c.:

1. *Explanation of 7 Edw. 7, c. 29, s. 92.*—It is hereby declared that so much of subsection (2) of section ninety-two of the Patents and Designs Act, 1907, as provides that the decision of a judge of the High Court to whom a petition is presented by virtue of that Act is to be final does not apply in the case of a petition for the revocation of a patent under section twenty-five of that Act.

2. *Short Title.* This Act may be cited as the Patents and Designs Act, 1908.

## CHAPTER 5.

[Police (Superannuation) Act, 1908.]

An Act to amend the Law relating to the Superannuation of the Police.

[1st August 1908.]

Be it enacted, &c.:

1. *Reckoning of service of constable joining after Act.* In reckoning the approved service of a constable who after the passing of this Act joins a police force to which the Police Act, 1890 [53 & 54 Vict. c. 45] applies, sub-section (4) of section four of the Police Act, 1890, shall be read as if the word "two" was substituted for the word "three."

2. *Reckoning of approved service of constable joining before Act.* In reckoning the approved service of a constable who, before the passing of this Act, has joined a police force to which the Police Act, 1890, applies, sub-section (4) of section four of the Police Act, 1890, shall be read as if the word "two" was substituted for the word "three" if but not unless such constable pays to any other police authority, in whose force he may have served and completed not less than two years' approved service, the amount of any rateable deduction from his pay which may have been paid to him in respect of his service in the force of such other police authority.

3. *Reckoning of approved service in different forces.* In reckoning the approved service of a constable who has joined a police force to which the Police Act, 1890, applies, before the passing of this Act, or who joins such a force after the passing of this Act, sub-section (1) of section three of the Police (Superannuation) Act, 1906 [6 Edw. 7, c. 7] shall be read as if the word "two" was substituted for the word "three."

4. *Short title.* This Act may be cited as the Police (Superannuation) Act, 1908, and shall be construed as one with the Police Acts, 1839 to 1906, and may be cited with those Acts as the Police Acts, 1839 to 1908.

## CHAPTER 6.

[Public Health Act, 1908.]

An Act to make the provisions of the Public Health Act, 1875, with respect to the provision and regulation of Markets applicable in rural districts.

[1st August 1908.]

Be it enacted, &c.:

1. *Provision, &c., of markets by rural authorities.* A rural district council may, with the consent of the Local Government Board, exercise with respect to the provision or regulation of markets any powers which an urban district council may exercise with the consent of owners and ratepayers under section one hundred and sixty-six of the Public Health Act, 1875 [38 & 39 Vict. c. 55], and sections one hundred and sixty-seven and one hundred and sixty-eight of that Act shall apply with respect to the exercise of those powers by a rural district council as they apply with respect to the exercise of those powers by an urban district council.

2. *Construction and short title.*—(1) This Act shall be construed as one with the Public Health Act, 1875.

(2) This Act may be cited as the Public Health Act, 1908, and this Act and the Public Health Acts may together be cited as the Public Health Acts.

#### CHAPTER 7.

[*Fatal Accidents (Damages) Act, 1908.*]

An Act to amend the Law with respect to the Assessment of Damages under the Fatal Accidents Acts. [1st August 1908.]

Be it enacted, &c. :

1. *Exclusion of payments by insurers in assessment of damages.*] In assessing damages in any action, whether commenced before or after the passing of this Act, under the Fatal Accidents Act, 1846 [9 & 10 Vict. c. 93], as amended by any subsequent enactment, there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this Act.

2. *Short title.*] This Act may be cited as the Fatal Accidents (Damages) Act, 1908; and the Fatal Accidents Act, 1846, the Fatal Accidents Act, 1864 [27 & 28 Vict. c. 85], and this Act may be cited together as the Fatal Accidents Acts, 1846 to 1908.

#### CHAPTER 8.

[*Post Office Savings Bank Act, 1908.*]

An Act to amend section eleven of the Savings Banks Act, 1904. [1st August 1908.]

Be it enacted, &c. :

1. *Acknowledgments of deposits.*]—(1) In the case of deposits not exceeding one pound, or such higher maximum amount as may from time to time be fixed by regulations made by the Postmaster-General with the consent of the Treasury under the Post Office Savings Banks Acts, 1861 to 1904, the entry in the depositor's book shall be conclusive evidence of the depositor's claim to the repayment of the deposit, with the interest thereon, upon demand made by him on the Postmaster-General, and it shall not be necessary in such case to transmit any acknowledgment of the deposit by the Postmaster-General.

(2) Section eleven of the Savings Banks Act, 1904, shall be and is hereby repealed.

2. *Short title and extent.*]—(1) This Act may be cited as the Post Office Savings Bank Act, 1908, and may be cited with the Post Office Savings Banks Acts, 1861 and 1904, as the Post Office Savings Banks Acts, 1861 to 1908.

(2) This Act shall extend to the Channel Islands and the Isle of Man, and the Royal Courts of the Channel Islands shall register the same.

#### CHAPTER 9.

[*Isle of Man (Customs) Act, 1908.*]

An Act to amend the Law with respect to Customs Duties in the Isle of Man. [1st August 1908.]

#### CHAPTER 10.

[*Tobacco Growing (Scotland) Act, 1908.*]

An Act to repeal the Law which prohibits the Growing of Tobacco in Scotland. [1st August 1908.]

#### CHAPTER 11.

[*Wild Birds Protection Act, 1908.*]

An Act to amend the Wild Birds Protection Acts, 1880 to 1904. [1st August 1908.]

Be it enacted, &c. :

1. *Offences and penalties.*] Any person who shall take or attempt to take any wild bird by means of a hook or other similar instrument shall be guilty of an offence, and shall be liable, on summary conviction, to a penalty not exceeding forty shillings, and for a second or subsequent offence to a penalty not exceeding five pounds.

2. *Prosecution of offences.*] Every offence under this Act may be prosecuted under section

five of the Wild Birds Protection Act, 1880 [43 & 44 Vict. c. 35].

3. *Short title and construction.*] This Act may be cited as the Wild Birds Protection Act, 1908, and shall be construed with the Wild Birds Protection Acts, 1880 to 1904, and those Acts and this Act may be cited collectively as the Wild Birds Protection Acts, 1880 to 1908.

#### CHAPTER 12.

[*Companies Act, 1908.*]

An Act to amend the Law with respect to the holding of Land by Companies incorporated in British Possessions. [1st August 1908.]

Be it enacted, &c. :

1. *Power to companies incorporated in British possessions to hold land.*] A company incorporated in a British possession which has, either before or after the passing of this Act, filed with the Registrar of Joint Stock Companies the documents and particulars specified in paragraphs (a), (b), and (c) of sub-section (1) of section thirty-five of the Companies Act, 1907 [7 Edw. 7, c. 50], shall have the same power to hold land in the United Kingdom as if it were a company incorporated under the Companies Acts, 1862 to 1907.

2. *Short title.*] This Act may be cited as the Companies Act, 1908; and the Companies Acts, 1862 to 1907, and this Act may be cited together as the Companies Acts, 1862 to 1908.

#### CHAPTER 13.

[*Polling Districts (County Councils) Act, 1908.*]

An Act to make further provision with respect to the Arrangement of Polling Districts for the Election of County Councillors. [1st August 1908.]

Be it enacted, &c. :

1. *Short title.*] This Act may be cited as the Polling Districts (County Councils) Act, 1908.

2. *Extension of powers of county councils in relation to polling districts.*] The powers of county councils for dividing electoral divisions into polling districts for the purpose of the election of county councillors may be exercised by them from time to time, and as often as they think fit, and such powers shall be deemed to include the power of altering any polling district from time to time.

#### CHAPTER 14.

[*Polling Arrangements (Parliamentary Boroughs) Act, 1908.*]

An Act to amend the Law relating to the Arrangement of Polling Districts in Parliamentary Boroughs. [1st August 1908.]

Be it enacted, &c. :

1. *Short title.*] This Act may be cited as the Polling Arrangements (Parliamentary Boroughs) Act, 1908.

2. *Constitution of county council as the local authority in parliamentary boroughs.*] The second paragraph of section eighteen of the Parliamentary Electors Registration Act, 1868 [31 & 32 Vict. c. 58], is hereby repealed, and the following enactment is substituted therefor: The local authority within the meaning of the same section, in boroughs where the town council is not the local authority, shall be the county council having jurisdiction over such borough, or over the greater part of the area thereof.

3. *Extent of Act.*] This Act shall not extend to Scotland or Ireland.

#### CHAPTER 15.

[*Costs in Criminal Cases Act, 1908.*]

An Act to consolidate and amend the Law relating to the Payment of Costs in Criminal Cases. [1st August 1908.]

Be it enacted, &c. :

Payment of Costs out of Local Funds.

1. *Power of court to direct payment out of*

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local funds of costs of prosecution or defence.]

—(1) The following courts, namely:—

(a) A court of assize or a court of quarter sessions before which any indictable offence is prosecuted or tried, and  
(b) a court of summary jurisdiction by which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, and

(c) any justice or justices before whom a charge not dealt with summarily is made against any person for an indictable offence (in this Act referred to as the examining justices),

may on any such proceedings by order direct the payment of the costs of the prosecution or defence or both in accordance with the provisions of this Act out of the funds of the county or county borough out of which they are payable under this Act (in this Act referred to as local funds).

(2) The costs which may be so directed to be paid are such sum as, subject to the regulations of the Secretary of State under this Act, appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and giving of evidence, and the amount of any costs so directed to be paid shall be ascertained as soon as practicable by the proper officer of the court.

(3) Where it has been certified that a prisoner ought to have legal aid under the Poor Prisoners Defence Act, 1903 [3 Edw. 7, c. 38], the costs which may be directed to be paid under this section shall, subject to the regulations of the Secretary of State under this Act, include the fees of solicitor and counsel, the costs of a copy of the depositions, and any other expenses properly incurred in carrying on the defence.

(4) No expenses to witnesses, whether for the prosecution or defence, shall be allowed at a court of assize or quarter sessions before which any indictable offence is prosecuted or tried, if such witnesses are witnesses to character only, unless the court shall otherwise order.

2. *Payment of costs directed to be paid at assizes or quarter sessions.*] As soon as the amount due to any person in respect of costs directed by a court of assize or a court of quarter sessions to be paid out of local funds has been ascertained, the proper officer shall make out and deliver to that person, or to any person who appears to the proper officer to be acting on behalf of that person, an order upon the treasurer of the county or borough out of the funds of which the costs are payable under this Act for the payment of that amount.

3. *Payment of costs directed to be paid by court of summary jurisdiction or examining justices.*]—(1) As soon as the amount due to any person in respect of costs directed by a court of summary jurisdiction or by examining justices to be paid out of local funds has been ascertained, the proper officer—

(a) shall pay to that person the amount due forthwith, if the amount is due for travelling or personal expenses in respect of his attendance to give evidence; and

(b) so far as the amount is not due in respect of attendance to give evidence, shall forward a certificate of the amount in the case of a committal to the proper officer of the court to which the defendant is committed, and in any other case to the clerk of the peace of the county or place for which the court or justices act.

(2) Any amount so paid by the proper officer to any person in respect of his attendance to give evidence shall be reimbursed to that officer by the treasurer of the county or borough out of the funds of which that sum is payable under this Act, and the treasurer shall be allowed any amount so reimbursed in his account.

(3) The certificate so forwarded shall be laid in the case of a certificate forwarded to the officer of the court to which the defendant is committed before that court, and in the case of a certificate

forwarded to the clerk of the peace before the next court of quarter sessions, and in either case the court shall consider the certificate and cause an order to be made on the treasurer of the county or borough out of the funds of which the amount is payable for the payment of the amount so certified, or of any less amount which the court considers should have been allowed in the circumstances under this Act.

Where a certificate is forwarded to the officer of a court to which a defendant is committed for trial, the officer shall when practicable include the amount payable in respect of the costs so certified in the order for payment of any costs directed to be paid by the court to which the defendant is committed for trial.

**4. Definition of local funds and procedure for payment of orders on local funds.]**—(1) Costs in the case of offences committed or supposed to have been committed in a county or borough, whether the court directing the payment is held in the borough or not, are payable under this Act out of the borough fund or borough rate of the county or borough, and costs in the case of other offences are payable under this Act out of the county fund of the administrative county in which the offence is committed or is supposed to have been committed.

For the purposes of this provision, offences committed within the jurisdiction of the Admiralty of England shall be deemed to have been committed in the place where the offender is prosecuted or tried, or, where the offender is tried at the Central Criminal Court, in the county of London; but any costs paid in the case of those offences out of the funds of any county or county borough shall be repaid out of moneys provided by Parliament.

(2) The treasurer of any county or county borough on whom an order is made for payment of any sum on account of costs under this Act shall, upon sight of the order, pay out of the county fund or borough fund or rate, as the case may be, to the person named therein or his duly authorised agent the sum specified in the order, and shall be allowed the sum in his accounts.

(3) The council of every county and of every county borough shall cause their treasurer, or some other person on his behalf, to attend at every court of assize or quarter sessions at which any indictable offence in respect of which an order can be made under this Act on the treasurer is to be tried for the purpose of paying any orders so made, and to remain in attendance for that purpose during the sitting of the court, or until such hour as the court shall direct.

(4) For the purpose of meeting any change in the financial relations between any counties and boroughs which may arise by virtue of the provisions of this Act as to the payment of any costs allowed under this Act, any necessary equitable adjustment may be made by agreement between the councils of the counties or boroughs concerned, or, in default of agreement, by the Local Government Board.

The Board may at their option determine the matter as arbitrators, or otherwise, and, if they elect to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868 [31 & 32 Vict. c. 119], respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of matters under this sub-section.

For the purpose of this sub-section the Local Government Board may hold any local inquiry, and sub-sections one and five of section eighty-seven of the Local Government Act, 1888 [51 & 52 Vict. c. 41], shall apply accordingly.

**5. Power to make regulations as to scales of costs, &c.]** A Secretary of State may make regulations generally for carrying into effect this Act and in particular with respect to the following matters, namely:—

(a) the rates or scales of payment of any costs which are payable out of local funds under this Act and the conditions under which any such costs may be allowed; and

(b) the manner in which an officer of the court making any payment on account

of costs to any person in respect of his attendance to give evidence is to be reimbursed out of local funds; and

(c) the form of orders, certificates, and notices under this Act, and the furnishing of information when certificates are forwarded under this Act by officers of courts of summary jurisdiction or of examining justices.

*Order of Payment of Costs by Defendant or Prosecutor.*

**6. Power of court to order payment of costs of prosecution by defendant or of defence by prosecutor.]**—(1) The court by or before which any person is convicted of an indictable offence may, if they think fit, in addition to any other lawful punishment, order the person convicted to pay the whole or any part of the costs incurred in or about the prosecution and conviction, including any proceedings before the examining justices, as taxed by the proper officer of the court.

(2) Where a person is acquitted on any indictment or information by a private prosecutor for the publication of a defamatory libel, or for any offence against the Corrupt Practices Prevention Act, 1854 [17 & 18 Vict. c. 102], or for the offence of any corrupt practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883 [40 & 47 Vict. c. 51], or on an indictment for an offence under the Merchandise Marks Acts, 1887 to 1894, or on an indictment presented to a grand jury under the Vexatious Indictments Act, 1859 [22 & 23 Vict. c. 17], in a case where the person acquitted has not been committed to or detained in custody or bound by recognizance to answer the indictment, the court before which the person acquitted is tried may order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, including any proceedings before the examining justices, as taxed by the proper officer of the court.

(3) Where a charge made against any person for any indictable offence (not dealt with summarily) is dismissed by the examining justices, the justices may, if they are of opinion that the charge was not made in good faith, order the prosecutor to pay the whole or any part of the costs incurred in or about the defence, but if the amount ordered to be paid exceeds twenty-five pounds the prosecutor may appeal against the order to a court of quarter sessions in manner provided by the Summary Jurisdiction Acts, and no proceedings shall be taken upon the order until either the time within which the appeal can be made has elapsed without an appeal being made, or, in case an appeal is made, until the appeal is determined or ceases to be prosecuted.

(4) An order under this section for the payment of costs by the person convicted or by the prosecutor may be made in addition to an order directing payment of costs out of local funds, and, where an order is made directing payment out of local funds, the costs shall primarily be payable out of local funds in accordance with this Act, but notice of any order under this section for the payment of costs by the person convicted or by the prosecutor shall be sent to the council of the county or borough out of the funds of which they are so payable.

(5) Any order under this section may be enforced, as to any costs primarily paid out of local funds, by the council of the county or borough out of the funds of which they have been so paid, and, as to any other costs, by the person to whom the costs are ordered to be paid, in the same manner as an order for the payment of costs made by the High Court in civil proceedings, or as a civil debt in manner provided by the Summary Jurisdiction Acts, and, in the case of costs which a person convicted is ordered to pay, out of any money taken on his apprehension from the person convicted, so far as the court so directs.

*Supplemental.*

**7. Power as to costs where person committed for trial is not ultimately tried.]** Where a person has been committed for trial for an indictable offence and is not ultimately tried, the court to which he is committed shall have power

to direct or order payment of costs under this Act in the same manner as if the defendant had been tried and acquitted.

**8. Saving.]** Nothing in this Act shall affect the operation of any enactment for the time being in force which provides for the payment of the costs of the prosecution or defence of an indictable offence out of any assets, money, or funds other than local funds, or by any person other than the prosecutor or defendant.

**9. Interpretation, &c.]**—(1) In this Act the expression "indictable offence" includes any offence punishable on summary conviction when that offence is under the Summary Jurisdiction Acts deemed to be as respects the person charged an indictable offence, and the expression "prosecutor" includes any person who appears to the court to be a person at whose instance the prosecution has been instituted, or under whose conduct the prosecution is at any time carried on.

(2) Any reference in this Act to a person committed for trial shall include a reference to a person whom a prosecutor is bound over to prosecute under the Vexatious Indictments Act, 1859, and any reference to the court to which a person is committed shall in such a case be construed as a reference to the court at which the prosecutor is so bound over to prosecute.

(3) This Act shall not apply in the case of an offence in relation to the non-repair or obstruction of any highway, public bridge, or navigable river, and costs in any such case may be allowed as in civil proceedings as if the prosecutor or defendant were plaintiff or defendant in any such proceedings.

(4) This Act shall apply in a case of a person committed as an incorrigible rogue under the Vagrancy Act, 1824 [5 Geo. 4, c. 83], as if that person were committed for trial for an indictable offence, and in the case of any appeal under that Act as if the hearing of the appeal by the court of quarter sessions were the trial of an indictable offence.

(5) For the purpose of section thirteen of the Criminal Appeal Act, 1907 [7 Edw. 7, c. 25] (which relates to the costs of appeal), the hearing of a case stated under the Crown Cases Act, 1848 [11 & 12 Vict. c. 78], shall be deemed to be an appeal, and the person in relation to whose conviction the case in stated shall be deemed to be an appellant, and the provisions of this Act giving power to direct the payment of the costs of the prosecution and defence shall not apply to the hearing of any case so stated.

(6) A reference to the payment of costs out of local funds under this Act shall be substituted for any reference to the payment of expenses in the case of an indictment for felony, or in cases of felony, or in the case of a misdemeanour under the Criminal Law Act, 1826 [7 Geo. 4, c. 64], or any like reference in section one of the Inebriates Act, 1889 [62 & 63 Vict. c. 36], or in section thirteen of the Criminal Appeal Act, 1907 [7 Edw. 7, c. 25], or in any other enactment.

**10. Repeal, commencement, short title, and extent.]**—(1) The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that, without prejudice to the general application of section thirty-eight of the Interpretation Act, 1889 [52 & 53 Vict. c. 63], with regard to the effect of repeals:—

(a) Any regulations made by a Secretary of State under section five of the Criminal Justice Administration Act, 1851 [14 & 15 Vict. c. 56], shall continue to have effect as if they had been made under the powers given by this Act; and

(b) Where, in determining the amount of any fees to be paid to counsel or solicitors or any other matter which may be, but is not at the time of the passing of this Act, regulated by regulations made by the Secretary of State, regard is had under the practice as existing at the time of the passing of this Act to any rates or scales of payment authorized by a court of quarter sessions, those rates and scales of payment shall have effect as if they were contained in regu-

lations made by the Secretary of State under this Act; and

(c) The repeal of any enactment which imposes an obligation to pay a fee to any officer shall not affect the salary paid in lieu of fees to any person who is such an officer at the time of the passing of this Act.

(2) This Act shall come into operation on the first day of January nineteen hundred and nine.

(3) This Act may be cited as the Costs in Criminal Cases Act, 1908.

(4) This Act shall not extend to Scotland or Ireland.

SCHEDULE.  
[Section 10.]  
REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.	Session and Chapter.	Short Title.	Extent of Repeal.
24 & 25 Vict. c. 99.	The Coinage Offences Act, 1861.	Section forty-two.	52 & 53 Vict. c. 52.	The Official Secrets Act, 1889.	Section four.
24 & 25 Vict. c. 100.	The Offences against the Person Act, 1861.	Sections seventy-four, seventy-five, and seventy-seven.	52 & 53 Vict. c. 69.	The Public Bodies Corrupt Practices Act, 1889.	Section five.
25 & 26 Vict. c. 61.	The Highway Act, 1862.	Section nineteen, from "and the costs" to the end of the section.	57 & 58 Vict. c. 60.	The Merchant Shipping Act, 1894.	Section seven hundred and one.
30 & 31 Vict. c. 35.	The Criminal Law Amendment Act, 1867.	Sections two and five.	3 Edw. 7, c. 38.	The Poor Prisoners' Defence Act, 1903.	Sub-section (2) of section one.
32 & 33 Vict. c. 62.	The Debtors Act, 1869.	Section seventeen.	4 Edw. 7, c. 15.	The Prevention of Cruelty to Children Act, 1904.	Section twenty.
32 & 33 Vict. c. 89.	The Clerks of Assize, &c. Act, 1869.	Sections nine, ten, and eleven.	6 Edw. 7, c. 34.	The Prevention of Corruption Act, 1906.	Sub-section (4) of section two.
33 & 34 Vict. c. 23.	The Forfeiture Act, 1870.	Section three.			
35 & 36 Vict. c. 33.	The Ballot Act, 1872.	Section twenty-four from "and the costs" to "in cases of felony."			
42 & 43 Vict. c. 49.	The Summary Jurisdiction Act, 1879.	In sub-section (1) of section seventeen, the words "and the expenses of the prosecution shall be payable as in cases of felony." Section twenty-eight except so far as that section is applied by section one of the Inebriates Act, 1899, or any other Act. The word "prosecution" in section one hundred and fifty-one, and section one hundred and sixty-nine. The words "twelve and thirteen" in section fifty-three, and sub-section (2) of section fifty-seven.			
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section eighteen.			
46 & 47 Vict. c. 51.	The Corrupt and Illegal Practices Prevention Act, 1883.	Section fourteen.			
48 & 49 Vict. c. 69.	The Criminal Law Amendment Act, 1885.	The words "and all costs of prosecutions mentioned in section one hundred and sixty-nine of the Municipal Corporations Act, 1882, shall be paid out of the county fund" in sub-section (6) of section thirty-five.			
50 & 51 Vict. c. 28.	The Merchandise Marks Act, 1887.	Section sixty-seven, from "and the county council" to the end of the section.			
51 & 52 Vict. c. 41.	The Local Government Act, 1888.	The words "but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes except in the case of persons committed for trial from the borough" in section one hundred.			
17 & 18 Vict. c. 102.	The Corrupt Practices Prevention Act, 1854.	Section one hundred and twenty-one.			
24 & 25 Vict. c. 96.	The Larceny Act, 1861.	Section one hundred and twenty-one.			
24 & 25 Vict. c. 97.	The Malicious Damage Act, 1861.	Section one hundred and twenty-seven.			
24 & 25 Vict. c. 98.	The Forgery Act, 1861.	Section fifty-four.			

CHAPTER 16.

[Finance Act, 1908.]

Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

1st August 1908.

PART I.

CUSTOMS AND EXCISE.

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4. Power to Transfer Management of Excise Duties from Inland Revenue to Customs.]—(1) His Majesty may by Order in Council transfer from the Commissioners of Inland Revenue to the Commissioners of Customs the management of any excise duties which are under the management of the Commissioners of Inland Revenue at the time the Order is made, and any powers and duties of the Commissioners of Inland Revenue which it appears necessary or expedient to transfer in consequence of or in connection with the transfer of the management of excise duties, and all powers and duties so transferred shall become powers and duties of the Commissioners of Customs.

(2) If an Order is made under this section, the Commissioners of Customs shall, as from the date fixed by the Order, be styled the Commissioners of Customs and Excise.

(3) Such provisions may be made by the Order in Council under this section as it appears necessary or expedient to make in order to give full effect to any transfer, or in consequence of any change of name, effected under this section, and for the purpose of making the provisions as to the action and procedure of the Commissioners of Customs and Excise under the Acts relating to Customs and Excise respectively uniform, the Order may provide that as to the action or procedure of the Commissioners any provisions of the Acts relating to excise shall have effect to the exclusion of similar provisions of the Acts relating to customs, or that any provisions of the Acts relating to customs shall have effect to the exclusion of similar provisions of the Acts relating to excise.

(4) The stamp duties on medicines and playing cards shall, for the purposes of this section and for all other purposes, be deemed to be excise duties.

PART II.  
STAMPS.

5. *Reduction of Stamp Duty on Marine Policies for a Voyage.*—(1) As from the first day of January nineteen hundred and nine, a penny shall be substituted for threepence as the stamp duty chargeable under paragraph (2) (a) of the heading *POLICY OF SEA INSURANCE* in the First Schedule to the Stamp Act, 1891 [54 & 55 Vict. c. 39], on a policy of sea insurance for or upon any voyage in respect of every full sum of one hundred pounds, and also any fractional part of a hundred pounds, insured by the policy.

PART III.

LOCAL TAXATION LICENCES.

6. *Collection of Duties on Certain Local Taxation Licences by County Councils.*—(1) The power to levy the duties on local taxation licences to which this section applies shall, as from the date to be fixed by Order in Council under this section, be transferred in England and Wales to county councils, and section seventeen of the Finance Act, 1907 [7 Edw. 7, c. 13], shall, as from the date of the transfer, cease to apply to or in respect of any such duties or the proceeds thereof.

(2) His Majesty may, by Order in Council, fix the date of the transfer under this section, and make any such further provisions as it appears necessary or expedient to make in order to give full effect to the transfer, and may make provision for the furnishing by county councils of returns to the Local Government Board as to the amounts levied under the power transferred by this section.

The transfer under this section shall not affect any equitable adjustment respecting the distribution of the proceeds of the local taxation licences made under the Local Government Act, 1888 [51 & 52 Vict. c. 41], or otherwise, but provision may be made by Order in Council under this section for any alteration which it appears necessary or expedient to make in consequence of the transfer in the procedure for making any payments, or otherwise giving effect to any such adjustment.

Sub-sections (3) (4) and (5) of section twenty of the Local Government Act, 1888, and any other provisions of that Act relating to the levy of the duties on local taxation licences by county councils shall, as respects the duties to which this section applies, have effect as if the power to levy those duties had been transferred under sub-section (3) of section twenty of that Act.

(3) When the transfer under this section takes effect there shall be charged on and paid annually out of the Consolidated Fund or the growing produce thereof to the Local Taxation Account a sum of forty thousand pounds, and the sum so paid shall be distributed amongst the county councils in England and Wales in proportion to the proceeds of the duties to which this section applies collected in each county during the preceding year.

(4) The duties on local taxation licences to which this section applies are the duties on licences to deal in game, licences for dogs, killing game, guns, carriages (including duties charged under sub-section (1) of section eight of the Locomotives on Highways Act, 1896 [59 & 60 Vict. c. 36]), armorial bearings, and male servants:

Provided that if the rate of any such duty is altered, that duty shall, unless Parliament makes provision to the contrary, cease to be a duty to which this section applies.

(5) The expressions "county" and "county council" in this section respectively include a county borough and the council of a county borough.

PART IV.

TAXES.

7. *Income Tax for 1908-9.*—(1) Income tax for the year beginning on the sixth day of April nineteen hundred and eight shall be charged at the rate of one shilling.

(2) All such enactments relating to income tax as were in force on the fifth day of April nineteen hundred and eight shall have full force and

effect with respect to the duty of income tax hereby granted.

(3) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A. and B. in the Income Tax Act, 1853 [16 & 17 Vict. c. 34], or of inhabited house duty, during the year ending on the fifth day of April nineteen hundred and eight, shall be taken as the annual value of such property for the same purpose during the next subsequent year; provided that this sub-section—

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed with the substitution of the twenty-fourth day of May for the fifth day of April; and

(b) shall not apply to the metropolis as defined by the Valuation (Metropolis) Act, 1869 [32 & 33 Vict. c. 67].

8. *Remuneration of Assessors.*—Section three of the Taxes (Regulation of Remuneration) Act, 1891 [54 & 55 Vict. c. 13] (which relates to allowances to assessors), shall be amended by the substitution of the words "such sum as the Commissioners of Inland Revenue, with the approval of the Treasury, may direct, not being less than" for the words "the same amount as" in paragraphs (a) and (b) of that section.

PART V.

NATIONAL DEBT.

9. *Partial Application of Surplus for Erection of Buildings for Public Offices.*—Such sum as is shown by the account certified by the Comptroller and Auditor-General under section four of the Sinking Fund Act, 1875 [38 & 39 Vict. c. 45], to be the surplus of income over expenditure for the financial year ended the thirty-first day of March nineteen hundred and eight shall, to the extent of six hundred thousand pounds, instead of being issued and applied as provided by that Act, be issued by the Treasury at such times as they direct to the Commissioners of Works and applied in defraying any expenses incurred by those Commissioners in erecting buildings and executing other works for or in connection with, public offices on land at Westminster acquired or to be acquired for the purpose.

PART VI.

GENERAL.

10. *Construction and Short Title.*—(1) Part I. of this Act so far as it relates to duties of Customs shall be construed together with the Customs Consolidation Act, 1876 [39 & 40 Vict. c. 36], and the Acts amending that Act, and so far as it relates to duties of Excise shall be construed together with the Acts which relate to the duties of Excise and the management of those duties.

Part II. of this Act shall be construed together with the Stamp Act, 1891 [54 & 55 Vict. c. 39].

(2) This Act may be cited as the Finance Act, 1908.

CHAPTER 17.

[Cran Measures Act, 1908.]

An Act to legalise the use of Cran and Quarter Cran Measures in connexion with trading in Fresh Herrings in England and Wales.

[1st August 1908.]

Be it enacted, &c. :—

1. *Use of Cran or Quarter Cran Measure.*—(1) In any place in which this Act is in force, any person buying, selling, delivering, or receiving fresh herrings shall be entitled to use for the purpose thereof the measure known as the cran, being a measure the content or capacity of which is determined by regulations made under section thirteen of the Herring Fishery (Scotland) Act, 1815 [55 Geo. 3, c. 94], or a quarter cran measure being a measure of such capacity that four times its content when filled with herrings shall be equal to one cran.

(2) A cran or quarter cran measure shall be made in the prescribed manner of wood or of such other material as may be prescribed, and shall be branded or otherwise marked by an inspector

of weights and measures in the prescribed manner.

(3) Subject to the provisions of this Act cran and quarter cran measures so made and marked as aforesaid shall be the only legal measures for use in buying, selling, delivering, or receiving fresh herrings in any place in which this Act is in force; and any person using or having in his possession in any such place for any such purpose any box, basket, or other measure not so made and marked (except as herein-after provided) shall, on summary conviction, be liable to a fine not exceeding five pounds for the first offence, and not exceeding twenty pounds for the second or any subsequent offence, and also to the forfeiture of the measure, and any bargain, contract, sale, or dealing made by such a measure shall be void:

Provided that nothing in this section shall prevent the sale of herrings by weight, or number, or in bulk.

2. *Verification of Measures.*—(1) Where this Act is in force the local authority shall fix the times and places within their district at which an inspector of weights and measures is to attend for the purpose of the verification of the cran or quarter cran measures; and the inspector shall then and there examine in the prescribed manner every such measure brought to him for the purpose of verification, and, if he find the same to be correctly made in the prescribed manner, shall brand or otherwise mark it in the prescribed manner, but a cran or quarter cran measure shall not be liable to be re-marked because used in any place other than that in which it was originally marked.

(2) If any inspector of weights and measures brands or otherwise marks a cran or quarter cran measure in contravention of this Act or regulations made thereunder, or without duly verifying it in the prescribed manner, or is guilty of a breach of any duty imposed on him by or under this Act, or otherwise misconducts himself in the execution of his powers under this Act, he shall be liable, on summary conviction, to a fine not exceeding five pounds for each offence.

3. *Powers of Inspection and Entry, &c.*—(1) An inspector of weights and measures, if authorised in writing by a justice of the peace, may at all reasonable times inspect all cran and quarter cran measures within his jurisdiction which are used or are in the possession of any person or on any premises for use for trade in fresh herrings, and may seize and detain any measure which is liable to be forfeited in pursuance of this Act, and may for the purpose of such inspection enter any place, whether a building or a vessel or in the open air, whether open or enclosed, where he has reasonable cause to believe that there is any measure which he is authorised by this Act to inspect.

(2) Any person who neglects or refuses to produce for such inspection all such measures as aforesaid in his possession or on his premises, or refuses to permit the officer to examine them or any of them, or obstructs the entry of the officer under this section, or otherwise obstructs or hinders an officer acting under this section, shall be liable on summary conviction to a fine not exceeding five, or in the case of a second or subsequent offence ten, pounds.

4. *Fees for Marking.*—An inspector of weights and measures may take in respect of the verification and marking of a measure under this Act such fees as may be specified by Order in Council and no others, and he shall, at such times, not less than once a quarter, as the local authority direct, account for and pay over to the local authority, or as they direct, all fees so taken.

5. *Forgery of Marks.*—(1) If any person forges or counterfeits any brand or other mark used for marking cran or quarter cran measures under this Act, or wilfully increases or diminishes the capacity of any such measure, he shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(2) If any person knowingly uses, sells, utters, disposes of, or exposes for sale any such measure with such forged or counterfeit mark thereon, or

any such measure so increased or diminished, he shall be liable, on summary conviction, to a fine not exceeding ten pounds.

(3) All such measures with any such forged or counterfeit mark thereon shall be forfeited.

(4) For the purposes of this section any person who removes a mark from any such measure and inserts the same into another such measure shall be deemed to forge or counterfeit a mark within the meaning of this section.

6. Use of Scotch Cran Measures in England, and vice versa.] Cran and quarter cran measures made and marked under and in accordance with section four of the Herring Fishery (Scotland) Act, 1889 [52 & 53 Vict. c. 23], and the Branding of Herrings (Northumberland) Act, 1891 [54 & 55 Vict. c. 26], shall be legal measures for use in buying, selling, delivering, or receiving fresh herrings in any place in which this Act is in force, and measures made and marked under and in accordance with this Act shall be legal measures for use in the Scotch herring fishery and in any area to which the powers of the Fishery Board for Scotland extend under the Branding of Herrings (Northumberland) Act, 1891.

7. Provision for Northumberland.] If this Act is put in force in any part of the area to which the Branding of Herrings (Northumberland) Act, 1891, applies, the powers of the Fishery Board for Scotland, and of their officers under that Act, shall cease to be exercisable in that part so far as concerns the marking of or otherwise dealing with cran or quarter cran measures.

8. Regulations by Board of Agriculture and Fisheries.] For the purposes of this Act, the Board of Agriculture and Fisheries may, as regards cran and quarter cran measures, make regulations with respect to any matter which under this Act may be prescribed, and any matter with respect to which the Board of Trade may make general regulations under the Weights and Measures Acts, 1878 to 1904, subject, however, to the conditions applicable to the making of such regulations.

9. Legal Proceedings.]—(1) Such portion of any fine under this Act, not exceeding a moiety, as the court of summary jurisdiction before whom a person is convicted under this Act think fit to direct may, if the court in their discretion so order, be paid to the informer, unless the in-

former is an inspector of weights and measures.

(2) All measures forfeited under this Act shall be broken up, and the materials thereof may be sold or otherwise disposed of as a court of summary jurisdiction direct, and the proceeds of the sale shall be applied in like manner as fines under this Act.

(3) A person shall not be liable to any increased penalty for a second offence under any section of this Act unless that offence was committed after conviction within five years previously for an offence under the same section.

(4) Where a person is convicted under any section of this Act of an offence, and the court by which he is convicted is of opinion that the offence was committed with intent to defraud, he shall be liable, in addition to, or in lieu of any fine, to be imprisoned with or without hard labour for a term not exceeding two months.

(5) Where any cran or quarter cran measure is found in the possession of any person carrying on trade in fresh herrings, or on the premises of any person which, whether a building, or a vessel, or in the open air, whether open or enclosed, are used for trade in fresh herrings, that person shall be deemed for the purposes of this Act, until the contrary is proved, to have the measures in his possession for use for trade in fresh herrings.

(6) Any person who feels himself aggrieved by a conviction or order of a court of summary jurisdiction under this Act may appeal to quarter sessions.

(7) An inspector of weights and measures may, with the consent of the local authority, prosecute any proceedings arising under this Act, or in the discharge of his duties as such inspector.

10. Local Authorities.] The local authority, for the purposes of this Act, shall be the local authority for the purposes of the Weights and Measures Acts, 1878 to 1904, and the expenses incurred by such a local authority under this Act shall be defrayed as expenses of the authority under those Acts, and two or more local authorities may combine for the purposes of this Act in like manner as for the purposes of those Acts, and for the purposes of this Act the jurisdiction of a local authority shall extend to the sea adjoining their district, and within the exclusive fishery limits of the British Islands.

11. Application of Act.]—(1) The Board of Agriculture and Fisheries may, on the application of a local authority in England or Wales,

by order to be published in such manner as the Board direct, declare this Act to be in force in the district of the local authority, or any part thereof, including the sea adjoining that district or part, and within the exclusive fishery limits of the British Islands.

(2) The local authority shall, two weeks at least before applying for an order, give notice of their intention to make such an application by advertising once, at least, in each of two successive weeks in one or more newspapers circulating in their district, and no order shall be made under this section until proof of such advertisement has been given to the satisfaction of the Board, and until one month has elapsed after the date of the latest advertisement.

12. Short Title.] This Act may be cited as the Cran Measures Act, 1908.

## CHAPTER 18.

[Expiring Laws Continuance Act, 1908.]

An Act to continue various Expiring Laws.

[1st August 1908.]

Whereas the Acts mentioned in Part I. of the Schedule to this Act are, in so far as they are in force, and are temporary in their duration, limited to expire on the thirty-first day of December nineteen hundred and eight:

And whereas the Act mentioned in Part II. of the Schedule to this Act is, to the extent aforesaid, limited to expire on the tenth day of August nineteen hundred and eight:

And whereas it is expedient to provide for the continuance as in this Act mentioned of those Acts, and of the enactments amending or affecting the same:

Be it therefore enacted, &c. :—

1. Continuance of Acts in Schedule.]—(1) The Acts mentioned in the Schedule to this Act shall, to the extent specified in column three of that Schedule, be continued until the thirty-first day of December nineteen hundred and nine, and shall then expire, unless further continued.

(2) Any unexpired enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner, whether they are mentioned in the schedule to this Act or not.

2. Short Title.] This Act may be cited as the Expiring Laws Continuance Act, 1908.

## SCHEDULE. [Section 1.]

### PART I.

1. Section and Chapter.	2. Short Title.	3. How far continued.	4. Amending Acts.
(1.) 3 & 4 Vict. c. 89	The Poor Rate Exemption Act, 1840	The whole Act.	—
(2.) 3 & 4 Vict. c. 91	The Textile Manufactures (Ireland) Act, 1840	The whole Act	5 & 6 Vict. c. 68. 30 & 31 Vict. c. 60.
(3.) 4 & 5 Vict. c. 30	The Ordnance Survey Act, 1841	The whole Act	33 Vict. c. 13. 47 & 48 Vict. c. 43. 52 & 53 Vict. c. 30.
(4.) 10 & 11 Vict. c. 98	The Ecclesiastical Jurisdiction Act, 1847	As to the provisions continued by 21 & 22 Vict. c. 50.	—
(5.) 14 & 15 Vict. c. 104	The Episcopal and Capitular Estates Act, 1851	The whole Act	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114, s. 10. [See]
(6.) 17 & 18 Vict. c. 102	The Corrupt Practices Prevention Act, 1854	So much as is continued by the Corrupt and Illegal Practices Prevention Act, 1883.	26 & 27 Vict. c. 29, s. 6. 31 & 32 Vict. c. 125. 46 & 47 Vict. c. 51.
(7.) 26 & 27 Vict. c. 105	The Promissory Notes Act, 1863	The whole Act	45 & 46 Vict. c. 61.
(8.) 27 & 28 Vict. c. 20	The Promissory Notes (Ireland) Act, 1864	The whole Act.	—
(9.) 28 & 29 Vict. c. 46	The Militia (Ballot Suspension) Act, 1865	The whole Act	45 & 46 Vict. c. 49.
(10.) 28 & 29 Vict. c. 83	The Locomotives Act, 1866	The whole Act	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77 (Part II). 59 & 60 Vict. c. 36. 61 & 62 Vict. c. 29.

1. Session and Chapter.	2. Short Title.	3. How far continued.	4. Amending Acts.
(11.) 31 & 32 Vict. c. 125 -	The Parliamentary Elections Act, 1868 - - -	So much as is continued by the Corrupt and Illegal Practices Prevention Act, 1883.	42 & 43 Vict. c. 75. 46 & 47 Vict. c. 51.
(12.) 32 & 33 Vict. c. 21 -	The Corrupt Practices Commission Expenses Act, 1869.	The whole Act - - - - -	34 & 35 Vict. c. 61.
(13.) 32 & 33 Vict. c. 56 -	The Endowed Schools Act, 1869 - - - -	As to the powers of making schemes - - -	36 & 37 Vict. c. 87. 37 & 38 Vict. c. 87. 52 & 53 Vict. c. 40.
(14.) 33 & 34 Vict. c. 112 -	The Glebe Loan (Ireland) Act, 1870 - - -	The whole Act - - - - -	34 & 35 Vict. c. 100. 49 Vict. c. 6.
(15.) 34 & 35 Vict. c. 87 -	The Sunday Observation Prosecution Act, 1871 -	The whole Act.	—
(16.) 35 & 36 Vict. c. 33 -	The Ballot Act, 1872 - - - - -	The whole Act - - - - -	45 & 46 Vict. c. 50 (Municipal Elections).
(17.) 38 & 39 Vict. c. 84 -	The Parliamentary Elections (Returning Officers) Act, 1875.	The whole Act - - - - -	46 & 47 Vict. c. 51, s. 32. 48 & 49 Vict. c. 62. 49 & 50 Vict. c. 57.
(18.) 39 & 40 Vict. c. 21 -	The Jurors' Qualification (Ireland) Act, 1876 -	The whole Act - - - - -	55 & 58 Vict. c. 49. 61 & 62 Vict. c. 37, s. 69.
(19.) 41 & 42 Vict. c. 41 -	The Parliamentary Elections Returning Officers Expenses (Scotland) Act, 1878.	The whole Act - - - - -	48 & 49 Vict. c. 62. 49 & 50 Vict. c. 68. 54 & 55 Vict. c. 49.
(20.) 43 Vict. c. 18 -	The Parliamentary Elections and Corrupt Practices Act, 1880.	The whole Act - - - - -	46 & 47 Vict. c. 51.
(21.) 43 & 44 Vict. c. 42 -	The Employers' Liability Act, 1880 - - -	The whole Act - - - - -	6 Edw. 7, c. 58, s. 14.
(22.) 46 & 47 Vict. c. 51 -	The Corrupt and Illegal Practices Prevention Act, 1883.	The whole Act - - - - -	58 & 59 Vict. c. 40.
(23.) 47 & 48 Vict. c. 70 -	The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.	The whole Act - - - - -	56 & 57 Vict. c. 73.
(24.) 49 & 50 Vict. c. 29 -	The Crofters Holdings (Scotland) Act, 1886 -	As to the powers of the Commissioners for the enlargement of holdings, s. 22.	50 & 51 Vict. c. 24. 51 & 52 Vict. c. 63. 54 & 55 Vict. c. 41.
(25.) 51 & 52 Vict. c. 55 -	The Sand Grouse Protection Act, 1888 - - -	The whole Act.	—
(26.) 52 & 53 Vict. c. 40 -	The Welsh Intermediate Education Act, 1889 -	As to the powers of the joint education committee and the suspension of the powers of the Charity Commissioners.	53 & 54 Vict. c. 60.
(27.) 58 & 59 Vict. c. 21 -	The Seal Fisheries (North Pacific) Act, 1895 -	The whole Act.	—
(28.) 59 Vict. c. 1 -	The Local Government (Elections) Act, 1896 -	The whole Act.	—
(29.) 59 & 60 Vict. c. 48 -	The Light Railways Act, 1896 - - -	As to the powers of the Light Railway Commissioners.	—
(30.) 59 & 60 Vict. c. 49 -	The Vaccination Act, 1898 - - -	The whole Act - - - - -	7 Edw. 7, c. 31.
(31.) 2 Edw. 7, c. 18 -	The Licensing (Ireland) Act, 1902 - - -	The whole Act.	—
(32.) 3 Edw. 7, c. 36 -	The Motor-Car Act, 1903 - - -	The whole Act.	—

## PART II.

(33.) 5 Edw. 7, c. 18 -	The Unemployed Workmen Act, 1905 - - -	The whole Act.	—
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## CHAPTER 19.

[Seed Potatoes and Seed Oats Supply (Ireland) Act, 1908.]

An Act to make provision with respect to Loans and Sales made for the purpose of the supply of Seed Potatoes and Seed Oats to occupiers and cultivators of land in Ireland.  
[1st August 1908.]

## CHAPTER 20.

[University of Durham Act, 1908.]

An Act to make further provision with respect to the University of Durham.  
[1st August 1908.]

## CHAPTER 21.

[Registration Act, 1908.]

An Act to amend the Law relating to the time for an Appeal from the Decision of a Revising Barrister, and matters consequential thereon. [1st August 1908.]

Be it enacted, &c. :—

1. *Alteration of time for notice of appeal from revising barrister's decision.*—(1) Any person intending to prosecute an appeal under the Parliamentary Voters Registration Act, 1843 [6 & 7 Vict. c. 18], from or in respect of the decision of a revising barrister shall, on or before the twenty-sixth day of October next after the conclusion of the revision, transmit to the Master

in the Crown Office the statement made by the revising barrister in pursuance of that Act, and also deliver or send by post a notice signed by him to the respondent in the appeal, stating his intention to prosecute the appeal.

Arrangements shall be made for hearing any such appeal without delay, and, as far as possible, continuously.

(2) Any such statement made by the revising barrister for the purpose of any such appeal may be made at any time within ten days after the conclusion of the revision, and the statement need not be read in open court, but shall be submitted to the appellant, who, if he approves the same, shall sign the same as directed by section forty-two of the said Act, and return the same to the revising barrister.

**2. Repeal and short title.**—(1) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Any reference in the Parliamentary Voters Registration Act, 1843, or any other Act, to the notice, time, or mode of appeal under any enactment so repealed shall be construed as a reference to the notice, time, or mode of appeal under this Act.

(2) This Act may be cited as the Registration Act, 1908, and shall be construed as one with the Registration of Electors Act, 1843 to 1891, and the Acts amending the same.

#### SCHEDULE.

##### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
6 & 7 Vict. c. 18.	The Parliamentary Voters Registration Act, 1843.	Sections sixty-two and sixty-three.
51 & 52 Vict. c. 10.	The County Electors Act, 1888.	Subsection (2) of section six.

#### CHAPTER 22.

[*Evicted Tenants (Ireland) Act, 1908.*]

An Act to amend section one of the Evicted Tenants (Ireland) Act, 1907, with respect to the compulsory acquisition of tenanted land.

[1st August 1908.]

#### CHAPTER 23.

[*Public Works Loans Act, 1908.*]

An Act to grant Money for the purpose of certain Local Loans out of the Local Loans Fund, and for other purposes relating to Local Loans.

[1st August 1908.]

#### CHAPTER 24.

[*Summary Jurisdiction (Ireland) Act, 1908.*]

An Act to amend the Law relating to Drunkenness in Ireland, and for purposes connected therewith.

[1st August 1908.]

#### CHAPTER 25.

[*Naval Lands (Volunteers) Act, 1908.*]

An Act to extend the Military Lands Acts to Naval Volunteers.

[1st August 1908.]

Be it enacted, &c. :—

**1. Application of Military Lands Acts to naval volunteers.**—The Military Lands Acts, 1892 to 1903, shall apply in the case of divisions or companies of the Royal Naval Volunteer Reserves as they apply in the case of volunteer corps, and shall have effect as if they were herein re-enacted and in terms made applicable to such divisions and companies, and in particular as if—

(a) for references to the Secretary of State there were therein substituted references to the Admiralty;

(b) for references to "military" there were therein substituted references to "naval";

(c) for references to sections twenty-four and twenty-five of the Volunteer Act, 1863 [26 & 27 Vict. c. 65], there were therein substituted references to those sections as applied to the Royal Naval Volunteer Reserves by the regulations made under the Naval Forces Act, 1903 [3 Edw. 7, c. 6], and set forth in the Schedule to this Act, which regulations are hereby confirmed.

**2. Short title.**—This Act may be cited as the Naval Lands (Volunteers) Act, 1908.

#### SCHEDULE.

##### REGULATIONS APPLYING SECTIONS TWENTY-FOUR AND TWENTY-FIVE OF THE VOLUNTEER ACT, 1863.

The officers and men of a division of the Royal Naval Volunteer Reserve may from time to time make rules for the management of the property, finances, and civil affairs of the division, and may alter and repeal any such rules; but any such rules shall not have effect unless and until they shall be approved by the Admiralty, and upon such approval the same shall be binding on all persons.

A copy of the rules in print or writing, or partly in print and partly in writing, certified under the hand of the commanding officer of the division as a true copy of the rules whereof the Admiralty's approval has been notified as aforesaid, shall be conclusive evidence of the rules of the division.

All moneys subscribed by, or to, or for the use of any division, or of any company in such division, and all effects belonging to such division or company respectively, or lawfully used by it, not being the property of any individual officer, petty officer, or man, or member of the instructional staff, and the exclusive right to sue for and recover money due to the division or to any such company as aforesaid, and all lands acquired by such division or company, shall vest in the commanding officer of the division for the time being and his successors in office, with power to him and his successors to sue, to make contracts and conveyances, and to do all other lawful things relating thereto; and any civil or criminal proceedings taken by virtue of the present section by the commanding officer of a division shall not be discontinued or abated by his death, resignation, or removal from office, but may be carried on by and in the name of his successor in office.

#### CHAPTER 26.

[*Naval Marriages Act, 1908.*]

An Act to authorise, for the purpose of Marriages in the United Kingdom, the Publication of Banns and the Issue of Certificates on board His Majesty's ships in certain cases.

[1st August 1908.]

Be it enacted, &c. :—

**1. Publication of banns on board His Majesty's ships.**—Where one of the parties to a marriage intended to be solemnised in England after the publication of banns is an officer, seaman, or marine, borne on the books of one of His Majesty's ships at sea, the banns may be published on three successive Sundays at morning service on board that ship by the chaplain, or, if there is no chaplain, by the captain or other officer commanding the ship, and, where banns have been so published, the person who published them shall, unless the banns have been forbidden on any of the grounds on which banns may be forbidden, give a certificate of publication.

**2. Issue of certificates on board His Majesty's ships.**—Where one of the parties to a marriage intended to be solemnised or contracted in England otherwise than after the publication of banns, or by licence, or by special licence, is an officer, seaman, or marine borne on the books of one of His Majesty's ships at sea, he may give notice of his intention to the captain or other officer commanding the ship, together with the name and address of the other party to the marriage, and such other information as may be necessary to enable the captain or other officer to fill up a certificate under this section, and shall at the same time make and sign such a declaration as is required by section two of the Marriage and Registration Act, 1856 [19 & 20 Vict. c. 119], and the captain or other officer may attest the declaration, and thereupon issue a certificate to the officer, seaman, or marine giving the notice.

**3. Application of enactments.**—A certificate given under this Act shall be in such form as may be prescribed by the Admiralty, and shall have the like force and effect as a certificate of publication of banns in a place of worship in

which banns may lawfully be published or a certificate by a superintendent registrar under the Marriage and Registration Act, 1856, as the case may be, and all enactments (including penal provisions) relating—

- (1) to the publication of banns and certificates thereof; and
- (2) to notices and declarations for obtaining certificates from superintendent registrars, and to such certificates;

and all rules required under any such enactments to be observed shall apply in the case of marriages to which this Act applies, subject to such adaptations therein as may be made by His Majesty by Order in Council.

**4. Application to Scotland.**—Where any such marriage as aforesaid is intended to be solemnised or contracted in Scotland, this Act shall apply subject to the following modifications:—

- (a) References to the registrar shall be substituted for references to the superintendent registrar;
- (b) References to the Marriage Notice (Scotland) Act, 1878 [41 & 42 Vict. c. 43], shall be substituted for references to the Marriage and Registration Act, 1856;
- (c) A certificate of publication of banns under this Act shall have the same force and effect as a certificate granted by a session clerk or other proper officer for granting the same of the due proclamation of the banne of marriage under the law of Scotland.

**5. Application to Ireland.**—(1) Where any such marriage as aforesaid is intended to be solemnised or contracted in Ireland, this Act shall apply subject to the following modifications:—

- (a) References to a district registrar of marriages in Ireland shall be substituted for references to a superintendent registrar;

(b) References to the Marriage Law (Ireland) Amendment Act, 1863, shall be substituted for references to the Marriage and Registration Act, 1856, except that so much of section four of the first-mentioned Act as requires a declaration of attendance at a place of worship in respect of the male party shall not apply in the case of declarations under this Act or made for the purposes of a marriage under this Act.

(2) Where one of the parties to a marriage intended to be solemnised or contracted in Ireland by licence from a district registrar of marriages in Ireland is an officer, seaman, or marine borne on the books of one of His Majesty's ships at sea, the provisions of section two of this Act as applied to Ireland shall apply as if the marriage was intended to be had without licence, and the notice to be given by the other party to the intended marriage need contain no statement as to his abode or residence in any district in the United Kingdom; but, before the district registrar issues the licence, the certificate of the captain or other officer of the ship given under this Act shall be produced to him.

**6. Short title and commencement.**—This Act may be cited as the Naval Marriages Act, 1908, and shall come into operation on the first day of January nineteen hundred and nine.

#### CHAPTER 27.

[*Married Women's Property Act, 1908.*]

An Act to render Married Women with a separate Estate liable for the support of their parents.

[1st August 1908.]

Be it enacted, &c. :—

**1. Married women having separate property to be liable for the maintenance of parents.**—A married woman having separate property shall be subject to all such liability for the maintenance of her parent or parents as a feme sole is now by law subject to for the maintenance of such parent or parents.

**2. Extent of Act.**—This Act shall apply only to England and Wales.

3. *Commencement.*] This Act shall come into operation on the first day of January nineteen hundred and nine.

4. *Short title.*] This Act may be cited as the Married Women's Property Act, 1908.

## CHAPTER 28.

### [Agricultural Holdings Act, 1908.]

An Act to consolidate the Enactments relating to Agricultural Holdings in England and Wales.

[1st August 1908.]

Be it enacted, &c. :—

#### Compensation for Improvements on Holdings.

1. *Right of tenant to compensation for improvements.*]—(1) Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act he shall, subject as in this Act mentioned, be entitled, at the determination of a tenancy, on quitting his holding to obtain from the landlord as compensation under this Act for the improvement such sum as fairly represents the value of the improvement to an incoming tenant.

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—

(a) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and

(b) as respects manuring as defined by this Act, the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.

(3) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

2. *Consent of landlord as to improvement in First Schedule, Part I.*] Compensation under this Act shall not be payable in respect of any improvement comprised in Part I. of the First Schedule hereto, unless the landlord of the holding has, previously to the execution of the improvement, consented in writing to the making of the improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation or otherwise as may be agreed upon between the landlord and the tenant, and, if any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

3. *Notice to landlord as to improvement in First Schedule, Part II.*]—(1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part II. of the First Schedule hereto, unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord notice in writing of his intention so to do, and of the manner in which he proposes to do the intended work, and, upon such notice being given, the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed.

(2) If any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

(3) In default of any such agreement the landlord may, unless the notice of the tenant is previously withdrawn, execute the improvement in any reasonable and proper manner which he thinks fit, and recover from the tenant as rent a sum not exceeding five per cent. per annum on the outlay incurred, or not exceeding such annual sum payable for a period of twenty-five years as will repay that outlay in that period, with interest at the rate of three per cent. per annum:

Provided that, if the landlord fails to execute the improvement within a reasonable time, the tenant may execute the improvement, and shall in respect thereof be entitled to compensation under this Act.

(4) The landlord and the tenant may by the contract of tenancy or otherwise agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.

4. *Agreements as to improvement in First Schedule, Part III.*] Where any agreement in writing secures to the tenant of a holding for any improvement comprised in Part III. of the First Schedule hereto, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act.

5. *Avoidance of contract inconsistent with Act.*] Subject to the foregoing provisions of this Act, any contract (whether under seal or not) made by a tenant of a holding, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement comprised in the First Schedule hereto, shall be void so far as it deprives him of that right.

6. *Determination of claims to compensation.*]—(1) If the tenant of a holding claims to be entitled to compensation, whether under this Act, or under custom or agreement, or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration.

(2) A claim by the tenant of a holding for compensation under this Act in respect of any improvement comprised in the First Schedule to this Act shall not be made unless notice of intention to make the claim has been given before the determination of the tenancy:

Provided that, where the claim relates to an improvement executed after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the notice may be given at any time before the tenant quits that part.

(3) Where any claim by a tenant of a holding for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any waste wrongfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming that sum may, if he thinks fit, by notice in writing given to the other party not later than seven days after the appointment of the arbitrator, require that the arbitration shall extend to the determination of the claim to that sum, and thereupon the provisions of this Act with respect to arbitration shall apply accordingly.

(4) Where a claim for compensation under this Act has been referred to arbitration, and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensation as is to be so substituted shall be awarded in respect of any improvements provided for by the agreement.

7. *Right of tenant who has paid compensation to outgoing tenant.*] Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted it at the time at which the incoming tenant quits it.

8. *Provision as to change of tenancy.*] A tenant who has remained in his holding during

two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements made by reason only that the improvements were not made during the tenancy on the determination of which he quits the holding.

9. *Restriction in respect of improvements by tenant about to quit.*]—(1) A tenant of a holding shall not be entitled to compensation under this Act in respect of any improvements, other than manuring as defined by this Act, begun by him,—

- (a) in the case of a tenant from year to year, within one year before he quits the holding, or at any time after he has given or received notice to quit which results in his quitting the holding; and
- (b) in any other case, within one year before the expiration of his contract of tenancy:

Provided that this section shall not apply in the case of any improvement—

- (i) Where the tenant, previously to beginning the improvement, has served notice on his landlord of his intention to begin it, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement; or
- (ii) In the case of a tenant from year to year, where the tenant has begun the improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, quits his holding at the expiration of that year.

#### Compensation for Damage by Game and for Disturbance.

10. *Compensation for damage by game.*]—(1) Where a tenant of a holding has sustained damage to his crops from game the right to kill and take which is vested neither in him nor in any one claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall subject as hereinafter mentioned be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends, and any agreement to the contrary, or in limitation of such compensation, shall be void.

(2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration, but no compensation shall be recoverable under this section unless notice in writing is given to the landlord as soon as may be after the damage was first observed by the tenant, and a reasonable opportunity is given to the landlord to inspect the damage—

- (a) in the case of damage to a growing crop, before the crop is begun to be reaped, raised, or consumed; and
- (b) in the case of damage to a crop reaped or raised before it is begun to be removed from the land—

and unless notice in writing of the claim, together with the particulars thereof, is given to the landlord within one month after the expiration of the calendar year, or such other period of twelve months as by agreement between the landlord and tenant may be substituted therefor, in respect of which the claim is made.

(3) Where the landlord proves that, under a contract of tenancy made before the commencement of this Act, any compensation for damage by game is payable by him, or that in fixing the rent to be paid under such contract allowance in respect of such damage to an agreed amount was expressly made, the arbitrator shall make such deduction from the compensation which would otherwise be payable under this section as may appear just.

(4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section.

(5) For the purposes of this section the expression "game" means deer, pheasants, partridges, grouse, and black game.

## 11. Compensation for unreasonable disturbance.] Where—

(a) the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit, or, having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so; or  
 (b) it has been proved that an increase of rent is demanded from the tenant of a holding, and that such increase was demanded by reason of an increase in the value of the holding due to improvements which have been executed by or at the cost of the tenant, and for which he has not, either directly or indirectly, received an equivalent from the landlord, and such demand results in the tenant quitting the holding,

the tenant upon quitting the holding shall, in addition to the compensation (if any) to which he may be entitled in respect of improvements, and notwithstanding any agreement to the contrary, be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connexion with the sale or removal of his household goods, or his implements of husbandry, produce, or farm stock, on or used in connection with the holding:

Provided that no compensation under this section shall be payable—

(a) unless the tenant has given to the landlord a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid;  
 (b) unless the tenant has, within two months after he has received notice to quit or a refusal to grant a renewal of the tenancy, as the case may be, given to the landlord notice in writing of his intention to claim compensation under this section;  
 (c) where the tenant with whom a contract of tenancy was made has died within three months before the date of the notice to quit, or in the case of a lease for years before the refusal to grant a renewal;  
 (d) if the claim for compensation is not made within three months after the time at which the tenant quits the holding.

In the event of any difference arising as to any matter under this section the difference shall, in default of agreement, be settled by arbitration.

## Compensation in case of Tenancy under Mortgagor.

12. Compensation to tenants when mortgagee takes possession.] Where a person occupies a holding under a contract of tenancy with a mortgagor, which is not binding on the mortgagee, then—

(1) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would be, due to the occupier from the mortgagor as respect crops, improvements, tillages, or other matters connected with the holding, whether under this Act or custom or an agreement authorised by this Act;  
 (2) If the contract of tenancy is for a tenancy from year to year or for a term of years not exceeding twenty-one, at a rackrent, the mortgagee shall, before he deprives the occupier of possession otherwise than in accordance with the contract of tenancy, give to the occupier six months' notice in writing of his intention so to do, and, if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of remaining in the holding for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived.  
 (3) Any sum ascertained to be due to the

occupier for compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the holding, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee.

## Procedure in Arbitrations.

13. Procedure in arbitrations.]—(1) All questions which under this Act or under the contract of tenancy are referred to arbitration shall, whether the matter to which the arbitration relates arose before or after the passing of this Act, be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of arbitration, by a single arbitrator in accordance with the provisions set out in the Second Schedule to this Act.

(2) Where any claim which is referred to arbitration relates to an improvement executed or matter arising after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the arbitrator may, if he thinks fit, make a separate award in respect of that claim.

(3) If in any arbitration under this Act the arbitrator states a case for the opinion of the county court on any question of law, the opinion of the court on any question so stated shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal, from whose decision no appeal shall lie.

(4) The Arbitration Act, 1889 [52 & 53 Vict. c. 49], shall not apply to any arbitration under this Act.

(5) Any person who wilfully and corruptly gives false evidence before an arbitrator in any arbitration under this Act shall be guilty of perjury, and may be dealt with, prosecuted, and punished accordingly.

14. Recovery of compensation and other sums due.] Where any sum agreed or awarded under this Act to be paid for compensation costs or otherwise by a landlord or tenant of a holding is not paid within fourteen days after the time when the payment becomes due, it shall, subject as in this Act provided, be recoverable upon order made by the county court as money ordered by a county court under its ordinary jurisdiction to be paid is recoverable.

## Charge on Holding for Compensation.

15. Power for landlord on paying compensation to obtain charge.]—(1) A landlord, on paying to the tenant the amount due to him under this Act, or under custom or agreement, or otherwise in respect of compensation for an improvement comprised in the First Schedule hereto, or on expending after notice given in accordance with this Act such amount as may be necessary to execute an improvement comprised in Part II. of the First Schedule hereto, shall be entitled to obtain from the Board an order in favour of himself, his executors, administrators, and assigns, charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Board think fit.

(2) Where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, in the opinion of the Board, have become exhausted.

(3) Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

16. Incidence of charge.] The sum charged by the order of the Board under this Act shall be a

charge on the holding, or the part thereof charged, for the landlord's interest therein and for all interests therein subsequent to that of the landlord; but so that, in any case where the landlord's interest is an interest in a leasehold, the charge shall not extend beyond the interest of the landlord, his executors, administrators, and assigns.

17. Advance made by a company.] Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by the Board under this Act, or made under any enactment hereby repealed, upon such terms and conditions as may be agreed upon between the company and the person entitled to the charge, and may assign any charge so acquired by them.

18. Certificate as to charges.] Where a charge may be made under this Act for compensation due under an award, the person making the award shall, at the request and cost of the person entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed to be exhausted.

19. Registration of charges.] A charge made by the Board under this Act shall be a land charge within the meaning of the Land Charges Registration and Searchers Act, 1888 ([51 & 52 Vict. c. 51], as amended by any subsequent enactment, and may be registered accordingly.

## Capital Money applicable for Compensation.

20. Capital money applicable for compensation.] Capital money arising under the Settled Land Acts, 1882 to 1890, may be applied—

(1) In payment as for an improvement authorised by those Acts of any money expended and costs incurred by a landlord under or in pursuance of this Act or any enactment hereby repealed, or under custom or agreement or otherwise, in or about the execution of any improvement comprised in Part I. or Part II. of the First Schedule hereto; and

(2) In discharge of any charge in respect of any such improvement created on a holding under this Act or any enactment hereby repealed, as if the charge were an incumbrance authorised by those Acts to be discharged out of that capital money.

## Fixtures and Buildings.

21. Tenants' property in fixtures and buildings.]—(1) Any engine, machinery, fencing, or other fixture affixed to a holding by a tenant, and any building erected by him thereon for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and be removable by the tenant before or within a reasonable time after the determination of the tenancy:

Provided that—

(i) Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding:

(ii) In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding;

(iii) Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal:

(iv) The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of his intention to remove it:

(v) At any time before the expiration of the notice of removal the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture

or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by arbitration.

(2) The provisions of this section shall apply to a fixture or building acquired since the thirty-first day of December nineteen hundred by a tenant in like manner as they apply to a fixture or building affixed or erected by a tenant, but shall not apply to any fixture or building affixed or erected before the first day of January eighteen hundred and eighty-four.

#### Miscellaneous Rights of Landlord and Tenant.

22. *Time of notice to quit.*—Where a half year's notice, expiring with a year of tenancy, is by law necessary and sufficient for the determination of a tenancy of a holding from year to year, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for such determination, unless the landlord and the tenant agree in writing that this section shall not apply, in which case a half year's notice shall be sufficient; but nothing in this section shall extend to a case where a receiving order in bankruptcy is made against the tenant.

23. *Resumption of possession for cottages, &c.*—Where a notice to quit is given by the landlord of a holding to a tenant from year to year with a view to the use of land for any of the following purposes:—

- (i) The erection of farm labourers' cottages or other houses with or without gardens;
- (ii) The provision of gardens for farm labourers' cottages or other houses;
- (iii) The provision of allotments for labourers;
- (iv) The provision of small holdings as defined by the Small Holdings and Allotments Act, 1907 [7 Edw. 7 c. 54];
- (v) The planting of trees;
- (vi) The opening or working of any coal, ironstone, limestone, brick earth, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connection therewith;
- (vii) The making of a watercourse or reservoir;
- (viii) The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice states that it is given with a view to any such use—

- (a) it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding; and
- (b) the provisions of this Act respecting compensation shall apply as if the part to which the notice relates were a separate holding; and
- (c) the tenant shall be entitled to a reduction of rent proportionate to the part to which the notice relates, and in respect of any depreciation of the value to him of the residue of the holding caused by the severance, or by the use to be made of the part severed, and the amount of that reduction shall be settled as in case of compensation under this Act:

Provided that the tenant may at any time within twenty-eight days after service of the notice to quit serve on the landlord a notice in writing to the effect that he accepts it as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

24. *Power of entry by landlord.*—The landlord of a holding or any person authorised by him may at all reasonable times enter on the holding for the purpose of viewing the state of the holding.

25. *Penal rents and liquidated damages.*—Notwithstanding any provision in a contract of

tenancy making the tenant of a holding liable to pay a higher rent or other liquidated damages in the event of any breach or nonfulfilment of a term or condition in the contract, a landlord shall not be entitled to recover, by distress or otherwise, any sum in consequence of any such breach or nonfulfilment in excess of the damage actually suffered by him in consequence of the breach or nonfulfilment:

Provided that this section shall not apply to any term or condition in a contract against the breaking up of permanent pasture, the grubbing of underwoods, or the felling, cutting, lopping, or injuring of trees, or regulating the burning of heather.

26. *Freedom of cropping and disposal of produce.*—(1) Notwithstanding any custom of the country, or the provisions of any contract of tenancy or agreement respecting the method of cropping of arable lands, or the disposal of crops, a tenant of a holding shall have full right to practise any system of cropping of the arable land on the holding and to dispose of the produce of the holding without incurring any penalty, forfeiture, or liability;

Provided that he shall previously have made, or, as soon as may be, shall make, suitable and adequate provision to protect the holding from injury or deterioration, which provision shall in the case of disposal of the produce of the holding consist in the return to the holding of the full equivalent manorial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract, or agreement:

This subsection shall not apply—

- (a) in the case of a tenancy from year to year, as respects the year before the tenant quits the holding or any period after he has given or received notice to quit which results in his quitting the holding; or
- (b) in any other case, as respects the year before the expiration of the contract of tenancy.

(2) If the tenant exercises his rights under this section in such a manner as to injure or deteriorate the holding, or to be likely to injure or deteriorate the holding, the landlord shall, without prejudice to any other remedy which may be open to him, be entitled to recover damages in respect of such injury or deterioration at any time, and, should the case so require, to obtain an injunction restraining the exercise of the rights under this section in that manner, and the amount of such damages may, in default of agreement, be determined by arbitration.

(3) A tenant shall not be entitled to any compensation in respect of improvements comprised in Part III. of the First Schedule to this Act which have been made for the purpose of making such provision to protect the holding from injury or deterioration as is required by this section.

(4) In this section the expression "arable land" shall not include land in grass which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.

27. *Record of holding.*—If at the commencement of a tenancy of a holding entered into after the commencement of this Act either party so requires, a record of the condition of the buildings, fences, gates, roads, drains, ditches, and cultivation of the holding shall be made within three months after the commencement of the tenancy by a person to be appointed in default of agreement by the Board, and in default of agreement the cost of making such record shall be borne by the landlord and the tenant in equal proportions.

#### Distress.

28. *Limitation of distress in respect of amount and time.*—It shall not be lawful for a landlord entitled to the rent of a holding to distrain for rent which became due in respect of that holding more than one year before the making of the distress:

Provided that, where it appears that according to the ordinary course of dealing between the landlord and the tenant of the holding the payment of rent has been deferred until the expiration of a quarter or half year after the date at which the rent legally became due, the rent shall

for the purpose of this section be deemed to have become due at the expiration of that quarter or half year, and not at the date at which it legally became due.

29. *Limitation of distress in respect of things to be distrained.*—(1) Where live stock belonging to another person has been taken in by the tenant of a holding to be fed at a fair price, the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found and, if so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to such amount as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock so long as it remains on the holding shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.

(4) Agricultural or other machinery which is the property of a person other than the tenant, and is on the holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and live stock which is the property of a person other than the tenant and is on the holding solely for breeding purposes, shall not be distrained for rent.

30. *Remedy for wrongful distress.*—(1) Where any dispute arises—

- (a) in respect of any distress having been levied on a holding contrary to the provisions of this Act;
- (b) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of that stock; or
- (c) as to any other matter or thing relating to a distress on a holding:

the dispute may be heard and determined by the county court or by a court of summary jurisdiction, and any such court may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid for feeding, or may make any other order which justice requires.

(2) Any such dispute shall be deemed to be a matter in which a court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts; but any person aggrieved by any decision of a court of summary jurisdiction under this section may appeal to a court of quarter sessions.

31. *Set-off of compensation against rent.*—Where the compensation for any improvement due under this Act or any enactment repealed by this Act, or under custom or agreement, to a tenant of a holding has been ascertained before the landlord distrains for rent, the amount of the compensation may be set-off against the rent, and the landlord shall not be entitled to distrain for more than the balance.

#### Persons under Disability, Trustees, &c.

32. *Appointment of guardian.*—Where a landlord or a tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the county court on the application of any person interested may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may revoke the appointment and appoint another guardian if and as occasion requires.

33. *Provisions respecting married women.*—Where a woman married before the commencement of the Married Women's Property Act, 1882 (45 and 46 Vict. c. 75), is entitled to land, her title to which accrued before that commencement, then—

- (a) if she is entitled to the land for her separate use and is not restrained from anticipation, she shall, for the purposes

of this Act, be in respect of the land as if she were a *feme sole*; and

(b) in any other case her husband's concurrence shall be requisite, and she shall for the purposes of this Act be examined apart from him by the county court, or by the judge of the county court for the place where she is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

**34. Provision as to limited owners.**—[Subject to the provisions of this Act in relation to Crown, duchy, ecclesiastical, and charity lands, a landlord of a holding, whatever may be his estate or interest in the holding, may give any consent, make any agreement, and do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were owner in fee simple, or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold.]

**35. Recovery of compensation, &c., from trustee.**—[Where any sum agreed or awarded to be paid for compensation, or any sum awarded under this Act to be paid by a landlord, is due from a landlord entitled to receive the rents and profits of the holding otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows and not otherwise (that is to say):—

(i) The amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the holding only;

(ii) The landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the Board a charge on the holding to the amount of the sum which is required to be paid, or which has been paid, as the case may be, to the tenant;

(iii) If the landlord neglects or fails to pay to the tenant the amount due to him for one month after it has become due, the tenant shall be entitled to obtain from the Board a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge;

(iv) Charges under this section shall be made in like manner as other charges under this Act.

**36. Estimation of best rent.**—[In estimating the best rent, or reservation in the nature of rent, of a holding for the purposes of any Act of Parliament, deed, or other instrument, authorising a lease to be made, provided that the best rent, or reservation in the nature of rent, is reserved, it shall not be necessary to take into account against the tenant any increase in the value of the holding arising from any improvements made or paid for by the tenant.]

#### Crown and Duchy Lands.

**37. Application to Crown lands.**—(1) This Act shall apply to land belonging to His Majesty in right of the Crown.

(2) With respect to any such land, for the purposes of this Act, the Commissioners of Woods, or other the proper officer or body having charge of the land for the time being, or, in case there is no such officer or body, then such person as His Majesty may appoint in writing under the Royal Sign Manual shall represent His Majesty, and shall be deemed to be the landlord.

(3) The power given to the Treasury by section one of the Crown Lands Act, 1866 [29 & 30 Vict. c. 62] (being a power to direct the cost of certain improvements to be charged to capital and repaid out of income), shall extend to any compensation under this Act payable by the Commissioners of Woods in respect of an improvement comprised in Part I. or Part II. of the First Schedule hereto.

(4) Any compensation under this Act payable by those Commissioners, in respect of an improve-

ment comprised in Part III. of the First Schedule hereto, shall be paid as part of the expenses of the management of the Land Revenues of the Crown.

**38. Application to land of Duchy of Lancaster.**—(1) This Act shall apply to land belonging to His Majesty in right of the Duchy of Lancaster.

(2) With respect to any such land for the purposes of this Act, the Chancellor of the Duchy shall represent His Majesty, and shall be deemed to be the landlord.

(3) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act shall be raised and paid as an expense incurred in improvement of land belonging to His Majesty in right of the Duchy within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven.

(4) The amount of any compensation under this Act payable by the Chancellor of the Duchy in respect of an improvement comprised in Part III. of the First Schedule to this Act shall be paid out of the annual revenues of the Duchy.

**39. Application to land of Duchy of Cornwall.**—(1) This Act shall apply to land belonging to the Duchy of Cornwall.

(2) With respect to any such land, for the purposes of this Act, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints, shall represent the Duke of Cornwall or other the possessor aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorised or required to do thereunder.

(3) Any compensation under this Act payable by the Duke of Cornwall, or other the possessor aforesaid, in respect of an improvement comprised in Part I. or Part II. of the First Schedule to this Act, shall be paid, and advances therefor made, in the manner and subject to the provisions of section eight of the Duchy of Cornwall Management Act, 1863 [26 & 27 Vict. c. 49], with respect to improvements of land mentioned in that section.

#### Ecclesiastical and Charity Lands.

**40. Application to ecclesiastical land.**—(1) Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord (other than that of entering on a holding for the purpose of viewing the state of the holding) shall not be exercised by the bishop in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners.

(2) Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord (other than as aforesaid) shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person or authority who, in case the benefice were vacant, would be entitled to present thereto, or of Queen Anne's Bounty.

(3) Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him in respect of any improvement comprised in the First Schedule hereto; and thereupon they may, instead of the incumbent, obtain from the Board a charge on the holding in respect thereof in favour of themselves, and every such charge shall be effectual notwithstanding any change of the incumbent.

**41. Application to charity land.**—The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the approval in writing of the Charity Commissioners or the Board of Education, as the case may require.

#### Special Provisions as to Market Gardens.

**42. Special provisions as to market gardens.**—(1) In the case of a holding in respect of which it is agreed by an agreement in writing made on or after the first day of January eighteen hun-

dred and ninety-six that the holding shall be let or treated as a market garden—

(i) the provisions of this Act shall apply as if the improvements comprised in the Third Schedule to this Act were comprised in Part III. of the First Schedule to this Act:

Provided that—

(a) in the case of Crown lands, compensation in respect of an improvement comprised in paragraphs (1) (2) and (5) of the said Third Schedule shall be paid in the same manner and out of the same funds as if it were an improvement comprised in Part I. of the said First Schedule; and

(b) in the case of Duchy lands, compensation in respect of any improvement comprised in the said Third Schedule shall be paid in the same manner and out of the same funds as if it were comprised in Part I. of the said First Schedule;

(c) the right of an incoming tenant to claim compensation in respect of the whole or part of an improvement which he has purchased may be exercised although his landlord has not consented in writing to the purchase:

(ii) The provisions of this Act relating to tenants' property in fixtures and buildings shall extend to every fixture or building affixed or erected by the tenant to or upon the holding, or acquired by him since the thirty-first day of December nineteen hundred, for the purposes of his trade or business as a market gardener:

(iii) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but, if the tenant does not remove such fruit trees and fruit bushes before the determination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

(2) Where under a contract of tenancy current on the first day of January eighteen hundred and ninety-six, a holding was at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof has then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any improvement comprised in the Third Schedule to this Act, the provisions of this section shall apply, in respect of that holding, as if it had been agreed in writing after that date that the holding should be let or treated as a market garden, so however that the improvements in respect of which compensation is payable under those provisions as so applied shall include improvements executed before as well as improvements executed after that date. Provided that where such a tenancy was a tenancy from year to year, the compensation payable in respect of an improvement comprised in the Third Schedule to this Act shall be such (if any) as could have been claimed if this Act had not been passed.

(3) Where the land to which such agreement relates, or so used and cultivated, consists of part of a holding only, this section shall apply as if that part were a separate holding.

#### Supplemental Provisions.

**43. Application of certiorari.**—An order of the county court or of a court of summary jurisdiction under this Act shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior court.

**44. Costs in county court.**—(1) The costs of proceedings in the county court under this Act shall be in the discretion of the court.

(2) The Lord Chancellor may prescribe scales of costs for those proceedings, and of costs to be taxed by the registrar of the court.

**45. Service of notice, &c.]** Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and in the case of a notice to a landlord "the person to whom it is to be given" shall include any agent of the landlord duly authorized in that behalf.

**46. General saving of rights.]** Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe, rentcharge, rent, or other thing.

**47. Improvements executed under repealed enactments.]** Except as otherwise expressly provided by this Act the compensation in respect of an improvement made or begun before the commencement of this Act, or made upon a holding held under a contract of tenancy, other than a tenancy from year to year, current on the first day of January, eighteen hundred and eighty-four, shall be such (if any) as could have been claimed if this Act had not been passed, but the procedure for the ascertainment and recovery thereof shall be such as is provided by this Act, and the amount so ascertained shall be payable, recoverable, and chargeable as if it were compensation under this Act.

**48. Interpretation.]**—(1) In this Act, unless the context otherwise requires,—

"Contract of tenancy" means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year;

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause;

"Landlord" means any person for the time being entitled to receive the rents and profits of any land;

"Tenant" means the holder of land under a contract of tenancy, and includes the executors, administrators, assigns, guardian, committee of the estate, or trustee in bankruptcy, of a tenant, or other person deriving title from a tenant;

"Holding" means any parcel of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord;

"Market garden" means a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening;

"Board" means the Board of Agriculture and Fisheries;

"County court," in relation to a holding, means the county court within the district whereof the holding, or the larger part thereof, is situate;

"Live stock" includes any animal capable of being distrained;

"Manuring" means any of the improvements numbered twenty-three, twenty-four, and twenty-five in Part III. of the First Schedule hereto;

"Agreement" includes an agreement arrived at by means of valuation or otherwise, and "agreed" has a corresponding meaning.

(2) The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

**49. Repeal.]** The enactments specified in the Fourth Schedule to this Act are hereby repealed

to the extent mentioned in the third column of that schedule:

Provided that—

(a) all orders, rules, scales of costs, and instruments issued and notices and consents given and having effect under any enactment hereby repealed shall have effect as if they had been made or given under this Act; and

(b) references in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to the corresponding provisions of this Act.

**50. Commencement.]** This Act shall come into operation on the first day of January, nineteen hundred and nine.

**51. Short title and extent.]**—(1) This Act may be cited as the Agricultural Holdings Act, 1908.  
(2) This Act shall not extend to Scotland or Ireland.

#### SCHEDULES.

##### FIRST SCHEDULE.

[Sections 1, 2, 5, 6, 15, 20, 37, 38, 39, 40, 42.]

##### PART I.

###### IMPROVEMENTS TO WHICH CONSENT OF LANDLORD IS REQUIRED.

(1) Erection, alteration, or enlargement of buildings.

(2) Formation of silos.

(3) Laying down of permanent pasture.

(4) Making and planting of osier beds.

(5) Making of water meadows or works of irrigation.

(6) Making of gardens.

(7) Making or improvement of roads or bridges.

(8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.

(9) Making or removal of permanent fences.

(10) Planting of hops.

(11) Planting of orchards or fruit bushes.

(12) Protecting young fruit trees.

(13) Reclaiming of waste land.

(14) Warping or weiring of land.

(15) Embankments and sluices against floods.

(16) Erection of wirework in hop gardens.

[N.B.—This part is subject as to market gardens to the provisions of the Third Schedule.]

##### PART II.

[Sections 3, 15, 20, 37, 38, 39.]

###### IMPROVEMENT IN RESPECT OF WHICH NOTICE TO LANDLORD IS REQUIRED.

(17) Drainage.

##### PART III.

[Sections 4, 26, 37, 38, 42, 48.]

###### IMPROVEMENTS IN RESPECT OF WHICH CONSENT OR NOTICE TO LANDLORD IS NOT REQUIRED.

(18) Chalking of land.

(19) Clay-burning.

(20) Claying of land or spreading bleas upon land.

(21) Liming of land.

(22) Marling of land.

(23) Application to land of purchased artificial or other purchased manure.

(24) Consumption on the holding by cattle,

sheep, or pigs, or by horses other than those

regularly employed on the holding, of corn, cake,

or other feeding stuff not produced on the holding.

(25) Consumption on the holding by cattle,

sheep, or pigs, or by horses other than those

regularly employed on the holding, of corn proved

by satisfactory evidence to have been produced

and consumed on the holding.

(26) Laying down temporary pasture with

clover, grass, lucerne, sainfoin, or other seeds

sown more than two years prior to the determination

of the tenancy.

(27) Repairs to buildings, being buildings necessary

for the proper cultivation or working of the

holding, other than repairs which the tenant is

himself under an obligation to execute:

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

#### SECOND SCHEDULE.

[Section 13.]

##### RULES AS TO ARBITRATION.

###### Appointment of Arbitrator.

1. A person agreed upon between the parties, or in default of agreement nominated by the Board on the application in writing of either of the parties, shall be appointed arbitrator.

2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment, notice, revocation, and consent under this part of these rules must be in writing.

###### Time for Award.

5. The arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Board may (whether the time for making the award has expired or not) direct.

###### Removal of Arbitrator.

6. Where an arbitrator has misconducted himself the county court may remove him.

###### Evidence.

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

8. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

###### Statement of Case.

9. The arbitrator may at any stage of the proceedings, and shall if so directed by the judge of the county court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that court any question of law arising in the course of the arbitration.

###### Award.

10. The arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not sooner than one month or later than two months after the delivery of the award for the payment of the money awarded as compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Board.

11. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

12. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the county court may set the award aside.

###### Costs.

14. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof

are to be paid, and the costs shall be subject to taxation by the registrar of the county court on the application of either party, but the taxation shall be subject to review by the judge of the county court.

15. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

*Forms.*

16. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Board shall, if used, be sufficient.

THIRD SCHEDULE.

[Section 42.]

IMPROVEMENTS SUBJECT TO SPECIAL PROVISIONS IN THE CASE OF MARKET GARDENS.

(1) Planting of standard or other fruit trees permanently set out;

(2) Planting of fruit bushes permanently set out;

(3) Planting of strawberry plants;

(4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years;

(5) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

FOURTH SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 61.	The Agricultural Holdings (England) Act, 1883.	The whole Act.
53 & 54 Vict. c. 57.	The Tenants' Compensation Act, 1890.	In section one the words "the Agricultural Holdings Act, 1883, and" Section two, except so far as relates to compensation under the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887. Section three and section four.
58 & 59 Vict. c. 27.	The Market Gardeners' Compensation Act, 1895.	The whole Act.
63 & 64 Vict. c. 50.	The Agricultural Holdings Act, 1900.	The whole Act, except so far as it relates to Scotland
6 Edw. 7, c. 56.	The Agricultural Holdings Act, 1906.	The whole Act, except so far as it relates to Scotland.
7 Edw. 7, c. 54.	The Small Holdings and Allotments Act, 1907.	Section thirty-eight

CHAPTER 29.

[*Grand Jury (Ireland) Act, 1836, Amendment Act, 1908.*]

An Act to amend Section Sixty-seven of the Grand Jury (Ireland) Act, 1836, with respect to Piers, Quays, and other Works, and for other purposes connected therewith. [1st August 1908.]

CHAPTER 30.

[*Appropriation Act, 1908.*]

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand nine hundred and nine, and to appropriate the Supplies granted in this Session of Parliament. [1st August 1908.]

CHAPTER 31.

[*Whale Fisheries (Ireland) Act, 1908.*]

An Act to regulate Whale Fisheries in Ireland. [1st August 1908.]

CHAPTER 32.

[*Friendly Societies Act, 1908.*]

An Act to amend the Friendly Societies Act, 1896. [1st August 1908.]

Be it enacted, &c. :

1. *Amendment of s. 8 of principal Act as to societies which may be registered.* To the descriptions of societies which may be registered as friendly societies, contained in sub-section (1) of section eight of the Friendly Societies Act, 1896 [59 & 60 Vict. c. 25] (hereinafter referred to as the principal Act), the following paragraph shall be added after paragraph (e) :—

"or

(f) guaranteeing the performance of their duties by officers and servants of the society or any branch thereof."

2. *Membership of minors under the age of one year.*—(1) A person of or under one year of age may be admitted as a member of a registered society or branch, and accordingly in section thirty-six of the principal Act (which relates to the membership of minors) the words "but above one year of age" shall be repealed.

(2) Where the rules of a registered friendly society or branch, in force at the commencement of this Act, provide for the admission as members of persons from the minimum age authorised by the principal Act, the rules shall be construed as providing for the admission as members of persons from birth.

3. *Limitation of benefits.* In section forty-one of the principal Act "three hundred pounds" shall be substituted for "two hundred pounds," and "fifty-two pounds" for "fifty pounds," as the maximum amount a member or person claiming through a member of a registered friendly society or branch is entitled to receive by way of gross sum and by way of annuity respectively.

4. *Powers to invest funds in trust securities.* In sub-section (1) of section forty-four of the principal Act (which relates to the manner in which the funds of registered societies and branches may be invested) the following paragraph shall be added after paragraph (e) :—

"or

(f) in any investment in which trustees are for the time being by law authorised to invest trust funds."

5. *Nominations by members of branches.* The following sub-section shall be added to section fifty-six of the principal Act (which relates to the power of members to dispose by nomination of sums payable on death) :

(6) A nomination or a variation or revocation of a nomination by writing under the hand of a member of a registered branch and delivered at or sent to the registered office of that branch, or made in a book kept at that office, shall be effectual notwithstanding that the money to which the nomination relates or some part thereof is not payable by that branch, but is payable by the society or some other branch.

6. *Disputes.* In section sixty-eight of the principal Act (which relates to the decision of disputes) the words "for not more than six months" shall be repealed in paragraph (b) of sub-section (1), and at the end of the section the following new sub-section shall be added :—

"(8) In this section the expression 'dispute' includes any dispute arising on the question whether a member or person aggrieved is entitled to be or to continue to be a member or to be reinstated as a member, but, save as aforesaid, in the case of a person who has ceased to be a member, does not include any dispute other than a dispute on a question between him and the society or branch or an officer thereof which arose whilst he was a member, or arises out of his previous relation as a member to that society or branch."

7. *Preliminary expenses of investigations, &c.* In sub-section (4) of section seventy-six of the principal Act (which relates to the expenses of inspections and special meetings) after the word "incidental" there shall be inserted the words "or preliminary."

8. *Notice of investigation with a view to dissolution.* In section eighty of the principal Act, "one month" shall be substituted for "two months," as the length of notice to be given to a registered society or branch whose affairs are to be investigated upon an application for dissolution under that section.

9. *Misapplication of property.* To sub-section (3) of section eighty-seven of the principal Act (which relates to the punishment of fraud, false declaration and misappropriations) the following proviso shall be added :—

Provided that where on such a complaint against a person of withholding or misappropriating property, or applying it for unauthorised purposes, it is not proved that that person acted with any fraudulent intent, he may be ordered to deliver up all such property or to repay any sum of money applied improperly, with costs, but shall not be liable to conviction, and any such order shall be enforceable as an order for the payment of a civil debt recoverable summarily before a court of summary jurisdiction.

10. *Recovery of costs and expenses.* To section ninety-one of the principal Act (which relates to the recovery of fines) the following sub-section shall be added :—

"(3) Any costs or expenses ordered or directed by the chief or other registrar to be paid by any person under this Act shall be recoverable summarily before a court of summary jurisdiction as a civil debt."

11. *Legal proceedings.* At the end of section ninety-four of the principal Act (which relates to legal proceedings) the following sub-sections shall be added :—

"(6) Where proceedings are taken against a society or branch for the recovery of any fine under this Act the summons or other process shall be sufficiently served by leaving a true copy thereof at the registered office of the society or branch, or at any place of business of the society or branch, or at any place of business of the society or branch, within the jurisdiction of the court in which the proceeding is brought, or, if that office or place of business is closed, by posting the copy on the outer door of that office or place of business :

"(7) Where the person against whom the proceedings are to be taken is himself a trustee of a society or branch the proceedings may be brought by the other trustees or trustee of the society or branch."

12. *Application to the Isle of Man.* At the end of section one hundred and three of the principal Act the following paragraph shall be added :—

"Any sum recoverable summarily as a civil debt shall be recoverable in accordance with the law and procedure in force in the Isle of Man for the recovery of civil debts."

13. *Definition of "signed."* At the end of section one hundred and six of the principal Act (which contains definitions) the following definition shall be added :—

The expression "signed" in relation to a body corporate shall mean sealed.

14. *Short title, construction, commencement, and printing.*—(1) This Act may be cited as the Friendly Societies Act, 1908, and the principal Act and this Act may be cited together as the Friendly Societies Acts, 1896 and 1908.

(2) This Act shall come into operation on the first day of January nineteen hundred and nine.

(3) Every enactment and word which is expressed to be substituted for or added to any portion of the principal Act shall form part of that Act in the place assigned to it by this Act, and that Act, and all Acts, including this Act, which refer thereto shall, as from the commencement of this Act, be construed as if the said enactment or word had been originally enacted in the principal Act in the place so assigned, and, where it is substituted for another enactment or word, had been so enacted in lieu of that enactment or word, and the expression "this Act," as used in the principal Act or this Act, shall be construed accordingly.

(4) A copy of the principal Act with every such enactment and word inserted in the place so assigned, and with the omission of the parts expressly repealed by this Act, and with the sub-sections and paragraphs numbered and lettered in manner directed by this Act, shall be prepared and certified by the Clerk of the Parliaments, and deposited with the rolls of Parliament; His Majesty's printer shall print in accordance with the copy so certified all copies of the principal Act which are printed after the commencement of this Act.

### CHAPTER 33.

[*Telegraph (Construction) Act, 1908.*]

An Act to amend the Telegraph Acts, 1863 to 1907, with respect to the Construction and Maintenance of Telegraphic Lines for telephonic and other telegraphic purposes.

[1st August 1908.]

Be it enacted, &c. :

1. *Use of land near road for telegraphic line.* If the owner, lessee, or occupier of any hedge or bank which forms the boundary of any street or public road along which the Postmaster-General desires to construct or maintain or is constructing or maintaining a telegraphic line, or of any land (being within twenty feet of any such street or road and not being common land or land dedicated to the recreation of the public) which is not enclosed on the side of the street or road, refuses or fails to give his consent to the construction of the line on, over, along, or across the hedge, bank, or land, within one month after being required to do so by notice from the Postmaster-General, a difference shall be deemed to have arisen between the Postmaster-General and that owner, lessee, or occupier, and sections three, four, and five of the Telegraph Act, 1878 [41 & 42 Vict. c. 76], shall apply accordingly as if it were a difference arising under that Act.

2. *Flying wires over land adjoining road.* Those provisions of section twenty-one of the Telegraph Act, 1863 [26 & 27 Vict. c. 112], which (as amended by section three of the Telegraph Act, 1892 [55 & 56 Vict. c. 59]) are not of general application, shall be of general application, and extend to rural districts and to public roads as well as to streets; but, in the case of a street or public road in a rural district, the publication of notice required under section twenty-three of the Telegraph Act, 1863, shall be substituted for the publication of notice under section twenty-one of that Act.

3. *Public recreation grounds.* Notwithstanding the provisions of this Act no telegraphic line shall be constructed on, over, along, or across any land dedicated to the recreation of the public, or any hedge or bank adjoining such land, without the consent of the person under whose control and management such land for the time being remains. Provided that if such consent is withheld or any condition is attached thereto to which the Postmaster-General objects, a difference shall be deemed to have arisen between the Postmaster-General and that person,

and sections three, four, and five of the Telegraph Act, 1878, shall apply accordingly as if it were a difference arising under that Act.

4. *Extension of s. 2 of Telegraph Act, 1892.* The provisions of section two of the Telegraph Act, 1892 [55 & 56 Vict. c. 59], shall apply where, on the application of the Postmaster-General, the Railway and Canal Commission are satisfied, that owing to the refusal or failure of any person, being the occupier, lessee, or owner of any land or building, to consent to the construction or maintenance of a work by the Postmaster-General, telegraphic communication cannot be supplied to any district or place, except at unreasonable cost or on unreasonable conditions.

5. *Lopping of trees which obstruct a telegraphic line on a street or road.*—(1) Where any tree overhangs any street or public road and obstructs or interferes with the working of any telegraphic line constructed along that street or road or will obstruct or interfere with the working of any telegraphic line about to be so constructed, the Postmaster-General may give notice to the owner and to the occupier of the land on which the tree is growing, requiring the tree to be lopped so as to prevent the obstruction or interference.

(2) If within one month from the service of notice by the Postmaster-General the owner or the occupier of the land on which the tree is growing gives a counter-notice to the Postmaster-General objecting to the lopping of the tree, a difference shall be deemed to have arisen between the Postmaster-General and that owner or occupier, and sections four and five of the Telegraph Act, 1878, shall apply accordingly as if it were a difference under that Act.

(3) If on the expiration of one month after notice is given by the Postmaster-General under this section, neither the owner nor the occupier has complied with the notice, or given a counter-notice under this section, or if the authority determining a difference under this section make an order in that behalf, the Postmaster-General may himself cause the tree to be lopped, and section seven of the Telegraph Act, 1863 (which relates to compensation), shall apply to the exercise of that power by the Postmaster-General.

(4) The Postmaster-General shall issue instructions to his officers with a view to ensuring that trees shall be lopped in a husbandlike manner and so as to avoid injury to their growth.

6. *Determination of differences.* Notwithstanding anything in the Railway and Canal Traffic Act, 1888 [51 & 52 Vict. c. 25], any difference directed to be determined by the Railway and Canal Commission under the Telegraph Acts, 1863 to 1907, or this Act, may in the discretion of the Commission be heard and determined by the two appointed Commissioners, whose order shall be deemed to be the order of the Commission.

7. *Extension of s. 4 (2) of Telegraph Act, 1892.* The provisions of sub-section two of section four of the Telegraph Act, 1892, shall be deemed to extend to telegraphs placed and maintained under a street or public road.

8. *Saving for canals.* Nothing in this Act shall apply to the undertaking of any canal company authorised by an Act of Parliament.

9. *Interpretation, notices, and short title.*—(1) In this Act any expressions to which a special meaning is attached under the Telegraph Acts, 1863 to 1907, or any of them, shall have the same respective meanings in this Act; and the expression "hedge" or "bank" includes any ditch adjoining to the hedge or bank and forming part of the boundary of the street or public road, as if it was part of the hedge or bank.

(2) Section twelve of the Telegraph Act, 1878 (which relates to the printing, authentication, and service of notices and other documents), shall apply for the purposes of this Act as it applies for the purposes of that Act.

(3) This Act may be cited as the Telegraph (Construction) Act, 1908, and may be cited with the Telegraph Acts, 1863 to 1907.

### CHAPTER 34.

[*Bee Pest Prevention (Ireland) Act, 1908.*]  
An Act to prevent the spread of Bee Pest or Foul Brood in Ireland.

[1st August 1908.]

### CHAPTER 35.

[*Polling Districts and Registration of Voters (Ireland) Act, 1908.*]

An Act to confer upon County Councils in Ireland the power to alter the Polling Districts and alter the method of compiling Lists of Voters.

[1st August 1908.]

### CHAPTER 36.

[*Small Holdings and Allotments Act, 1908.*]

An Act to consolidate the enactments with respect to Small Holdings and Allotments in England and Wales.

[1st August 1908.]

Be it enacted, &c. :

#### PART I.

##### SMALL HOLDINGS.

###### *Provision of Small Holdings.*

1. *Powers and duties of providing small holdings.* A county council may if they are of opinion that there is such a demand for small holdings in their county as justifies them in putting into operation this Part of this Act, and shall, if so required by a scheme under this Act, provide small holdings for persons who desire to buy or lease and will themselves cultivate the holdings.

###### *Schemes as to the Provision of Small Holdings.*

2. *Appointment of Small Holdings Commissioners, &c.*—(1) With a view to extending the provision of small holdings, there shall continue to be Small Holdings Commissioners (hereinafter referred to as "the Commissioners"), and the Board of Agriculture and Fisheries (hereinafter referred to as "the Board") may appoint two or more persons possessed of a knowledge of agriculture to be Commissioners and may appoint such other officers for the purposes of this Act as the Board may, with the consent of the Treasury, determine.

(2) There shall continue to be paid out of money provided by Parliament to the Commissioners and officers so appointed such salaries or remuneration as the Treasury may from time to time determine; and all expenses incurred by those Commissioners and officers in the execution of their duties under this Act, to such amount as may be sanctioned by the Treasury, shall (except as may otherwise expressly provided by this Act) continue to be defrayed out of money provided by Parliament.

###### *Inquiries and reports by Commissioners.*—

(1) The Commissioners, acting under the directions of the Board, shall ascertain the extent to which there is a demand for small holdings in the several counties or would be a demand if suitable land were available, and the extent to which it is reasonably practicable, having regard to the provisions of this Act, to satisfy any such demand, and for that purpose shall confer with the county councils and may co-operate with such other authorities, associations, and persons as they think best qualified to assist them, and take such other steps as they think necessary.

(2) The council of any county, borough, district, or parish may make representations to the Commissioners in respect of any such matters as aforesaid, and it shall be the duty of every council to furnish the Commissioners with such information, and to give them such other assistance as they may reasonably require for the purposes of this section.

(3) The Commissioners shall report the information acquired by them respecting any county to the Board, and shall state whether it is desirable, in the opinion of the Commissioners, that such a scheme as is hereinafter mentioned should be made, and may indicate the nature of the proposals which the Commissioners consider ought to be embodied in the scheme.

(4) If in the course of their inquiries the Commissioners receive any information as to the existence of a demand for allotments, they shall communicate the information to the councils of the county, and of the borough, urban district, or parish concerned.

**4. Preparation of draft schemes.]**—(1) Where the Board, after considering the report and such representations as aforesaid as respects any county, are of opinion that it is desirable that a scheme should be made, the Board shall forward the report of the Commissioners with such modifications or observations (if any) as the Board think desirable to the county council, and it shall be the duty of the county council to prepare one or more draft schemes to give effect to the report, subject to such modifications (if any) as aforesaid, or to such other modifications as the Board may make after considering any representations submitted to them by the county council, and in preparing the drafts the council shall have regard to the proposals (if any) of the Commissioners indicated in the report.

(2) If the county council decline to undertake this duty, or within six months after receiving the report or within such extended time as may be allowed by the Board, fail to prepare such one or more draft schemes as appear to the Board desirable, the Board may direct the Commissioners to prepare one or more draft schemes.

(3) A county council, if they think fit, may, without receiving any such report as aforesaid, prepare one or more draft schemes for the provision of small holdings for their county.

(4) A draft scheme under this section may specify—

- (a) the localities in which land is to be acquired for small holdings;
- (b) the approximate quantity of land to be acquired, and the number, nature, and size of the small holdings to be provided, in each locality;
- (c) whether, and to what extent, grazing or other similar rights, to be defined in the scheme, should be attached to the small holdings created in pursuance of the scheme, and, if so, the approximate quantity of land or extent and nature of the rights to be acquired for the purpose;
- (d) the time within which the scheme or any part thereof is to be carried into effect;

and the scheme may contain such incidental, consequential, or supplemental provisions (including provisions as to the subsequent variation of the scheme) as may appear necessary or proper for the purposes of the scheme.

(5) Where the Commissioners report or the county councils concerned are of opinion that a scheme should be made affecting two or more counties, the scheme may be prepared by the councils jointly, and may provide for joint action being taken by the councils.

**5. Procedure to schemes.]**—(1) A copy of any draft scheme shall if prepared by a county council be sent to the Board, and if prepared by the Commissioners be sent to the Board and to any county council concerned, and the draft scheme and any modifications therein which the Board may propose to make shall be published and advertised together with notice of the time within and manner in which objections are to be sent to the Board in such manner as the Board think best adapted for informing the persons affected and for insuring publicity.

(2) The Board shall consider the draft scheme and any objections thereto duly made, and may in any case and shall if the county council object to the scheme, or, in the case of a scheme prepared by the council, to any modifications therein which the Board propose to make, hold a public local inquiry, at which the county council, and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard.

(3) The Board, after considering the objections and the report of the person holding the inquiry (if any), may settle and confirm the scheme either without modification or subject to such modifications as the Board think fit, or may annul the scheme.

**6. Duty of councils to carry schemes into effect.]**—(1) It shall be the duty of a county council on which obligations are imposed by a scheme to carry them into effect within such time as may be specified in the scheme, or within such further time as may be allowed by the Board, and for that purpose the council may exercise any of the powers conferred on them by the provisions of this Act relating to small holdings.

(2) If the county council fail so to fulfil their obligations, the Board shall by order direct the Commissioners to take such steps as may be necessary for carrying the scheme into effect, and upon such order being made the Commissioners shall for the purpose have all the powers of a county council under the provisions of this Act relating to small holdings, and those provisions shall apply as if references to the Commissioners were substituted for references to a county council :

Provided that such expenses of the Commissioners as the Board certify to have been incurred by the Commissioners in the exercise of such powers in relation to any scheme and to be properly payable by the county council shall on demand be repaid to the Board by the county council in default out of the county fund, and shall be recoverable as a debt due to the Crown, and such sums as the Board certify to have been received by the Commissioners in respect of any land acquired shall be paid to the council.

(3) Any order made by the Board directing the Commissioners to carry a scheme into effect shall be laid before both Houses of Parliament as soon as may be after it is made.

(4) If it appears to the Board that the carrying out of a scheme under this Act has resulted or is likely to result in a loss, the Board may, with the consent of the Treasury, pay or undertake to pay out of the Small Holdings Account the whole or any part of that loss.

*Powers of County Councils in relation to the Provision of Small Holdings.*

**7. Power to acquire land for small holdings.]**—(1) A county council may, for the purpose of providing small holdings for persons who desire to buy or lease and will themselves cultivate the holdings, by agreement purchase or take on lease land, whether situate within or without their county.

(2) If a county council are unable to acquire by agreement and on reasonable terms suitable land for the purpose of providing small holdings for persons who desire to lease small holdings, they may for that purpose acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land.

(3) A county council shall not acquire land for small holdings save at such price or rent that, in the opinion of the council, all expenses incurred by the council in relation to the land will be recouped out of the purchase money for the land sold by the council, or in the case of land let out of the rent, and the council shall fix the purchase money or rent at such reasonable amount as will, in their opinion, guard them against loss.

*8. Adaptation of land for small holdings.]*

(1) A county council may, if they think fit, before sale or letting, adapt for small holdings any land acquired by them for that purpose, by dividing and fencing it, making occupation roads, and executing any other works, such as works for the provision of drainage or water supply, which can in the opinion of the council be more economically and efficiently executed for the land as a whole.

(2) A county council may also, if they think fit, as part of the agreement for the sale or letting of a small holding, adapt the land for a small holding by erecting thereon such buildings, or making such adaptations of existing buildings, as in their opinion are required for the due occupation of the holding, and cannot be made by the purchaser or tenant.

**9. Sale or letting of small holdings.]**—(1) A county council shall apportion the total cost of the acquisition of the land, and of any adaptation thereof, among the several holdings in such manner as seems just, and shall, save as herein-

after mentioned, offer the small holdings for sale or letting in accordance with rules under this Part of this Act.

(2) A county council shall have power—

(a) to sell or to let one or more small holdings to a number of persons working on a co-operative system, provided such system be approved by the county council; and

(b) with the consent of the Board, to let one or more small holdings to any association formed for the purposes of creating or promoting the creation of small holdings, and so constituted that the division of profits amongst the members of the association is prohibited or restricted.

(3) The cost of acquisition and adaptation shall for the purposes of this section include every expense incurred by the council in relation to the land, inclusive of any allowance to any officers of the council for work done in relation thereto.

**10. Rules as to mode and conditions of sale and letting.]**—(1) A county council acquiring land for small holdings shall make rules for carrying into effect the provisions of this Act relating to small holdings and in particular—

(a) as to the manner in which holdings are to be sold or let or offered for sale or letting; and

(b) as to the notice to be given of the offer for sale or letting; and

(c) for guarding against any small holding being let or sold to a person who is unable to cultivate it properly, and otherwise for securing the proper cultivation of a holding; and

(d) for prescribing the terms and conditions on or subject to which small holdings are to be sold or let by the county council.

(2) All rules made under this section shall be subject to confirmation by the Board.

*11. Regulations as to purchase money and sale.]*

—(1) The purchase money for each small holding sold by a county council shall include the costs of registration of title, but shall not include any expense incurred by the purchaser for legal or other advice or assistance.

(2) A purchaser shall, within such time, not less than one month after the agreement for purchase, as is fixed by rules under this Act, complete the purchase.

(3) On such completion he shall pay not less than one-fifth of the purchase money.

(4) A portion representing not more than one-fourth of the purchase money may, if the county council think fit, be secured by a perpetual rent-charge which shall be redeemable in manner directed by section forty-five of the Conveyancing and Law of Property Act, 1881 [44 & 45 Vict. c. 41], with respect to rentcharges to which that section applies.

(5) The residue (if any) of the purchase money shall be secured by a charge on the holding in favour of the council, and shall either be repaid by half-yearly instalments of principal with such interest, and within such term not exceeding fifty years from the date of the sale, as may be agreed on with the council, or shall, if the purchaser so requires, be repaid with such interest and within such term as aforesaid by a terminable annuity payable by equal half-yearly instalments. The amount for the time being unpaid may at any time be discharged, and any terminable annuity may at any time be redeemed, in accordance with tables fixed by the county council.

(6) A council may, if they think fit, agree to postpone for a term not exceeding five years the time for payment of all or any part of an instalment either of principal or interest or of a terminable annuity, in consideration of expenditure by the purchaser which, in the opinion of the council, increases the value of the holding, but shall do so on such terms as will, in their opinion, prevent them from incurring any loss.

(7) A small holding may be sold subject to such rights of way or other rights for the benefit of other small holdings as the council consider necessary or expedient.

12. *Conditions affecting small holdings.*]—(1) A small holding sold by a county council under this Act or any enactment repealed by this Act shall for a term of twenty years from the date of the sale, and thereafter so long as any part of the purchase money remains unpaid, be held subject to the following conditions:—

- (a) any periodical payments due in respect of the purchase money shall be duly made;
- (b) the holding shall not be divided, subdivided, assigned, let, or sub-let without the consent of the county council;
- (c) the holding shall be cultivated by the owner or occupier as the case may be, and shall not be used for any purpose other than agriculture;
- (d) not more than one dwelling-house shall be erected on the holding;
- (e) any dwelling-house erected on the holding shall comply with such requirements as the county council may impose for securing healthiness and freedom from overcrowding;
- (f) no dwelling-house or building on the holding shall be used for the sale of intoxicating liquors;
- (g) in the case of any holding on which, in the opinion of the county council, a dwelling-house ought not to be erected, no dwelling-house shall be erected on the holding without the consent of the county council;

Provided that a county council may, if they think fit, relax the condition that not more than one dwelling-house shall be erected on a holding, if in their opinion such relaxation will be for the benefit of that or adjacent small holdings provided by the council, but so that the council shall not authorise more than one dwelling-house to be erected for occupation with any one small holding.

(2) If any such condition is broken, the council may, after giving the owner an opportunity of remedying the breach (if it is capable of remedy), cause the holding to be sold.

(3) If, on the decease of the owner while the holding is subject to the conditions imposed by this section, the holding would, by reason of any devise, bequest, intestacy, or otherwise, become sub-divided, the council may require the holding to be sold within twelve months after such decease to some one person, and, if default is made in so selling the holding, the council may cause the holding to be sold.

(4) Where under either of the two preceding sub-sections a county council have power to cause or require a small holding to be sold, the council may, in the event of their requiring such holding for the purposes of small holdings, by notice in writing require the holding to be sold to themselves at such price as, in default of agreement, may be determined by arbitration, and thereupon the council shall, after such date as may be specified by the notice, and on production to the registrar of the land registry of evidence of service of the notice and of the payment of the sum so agreed or determined, or of the tender of such payment, be registered as the proprietor of the land in place of the registered proprietor, and such registration shall operate as a registration on a transfer for valuable consideration under the Land Transfer Acts, 1875 and 1897 [38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65].

A notice for the purposes of this sub-section shall be deemed to be sufficiently served if sent by registered post addressed to the owner or the personal representatives of the deceased owner at his registered address or at his last known place of abode.

This sub-section shall not apply in the case where a small holding has been let by a county council.

(5) Any sale by a county council under this section may be made either subject to the charge in respect of purchase money or free, wholly or partly, from that charge, and in either case the provisions of this Act with respect to the purchase money shall apply in like manner as if the sale were the first sale of the holding.

(6) The proceeds of the sale shall be applied in discharge of any unpaid purchase money for

the holding, or redemption of any rentcharge or terminable annuity which is not to continue a charge on the holding, and, subject as aforesaid, shall be paid to the person appearing to the council to be entitled to receive the same.

(7) A county council may, under special circumstances, to be recorded in their minutes, sell or consent to the sale under this section of a small holding free from all or any of the conditions imposed by this section, and may give such consent on such terms as they think fit.

(8) A small holding let by a county council shall be held subject to the conditions on which it would under this section be held if it were sold, except so far as those conditions relate to the purchase money, and except so far as is otherwise expressly provided by this section; and, if any such condition or any term of the letting is broken, the council may, after giving the tenant an opportunity of remedying the breach (if it is capable of remedy), determine the tenancy.

(9) Nothing in or done under this section shall derogate from the effect of any building or sanitary bye-laws for the time being in force.

13. *Registration of title to small holdings.*]—(1) Where a county council have purchased land for small holdings, they shall apply to be registered as proprietors thereof under the Land Transfer Acts, 1875 and 1897 [38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65], and may be registered as proprietors of the land with any title authorised by those Acts.

(2) When a county council, after having been so registered, transfer any such land to a purchaser of a small holding, the purchaser shall be registered as proprietor of the land with an absolute title, subject only to such incumbrances as may be created under this Act; and in any case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances shall be in damages only, and such damages shall be recoverable against the county council.

(3) *Rules under the Land Transfer Acts, 1875 and 1897, may—*

- (a) adapt those Acts to the registration of small holdings, with such modifications as appear to be required; and
- (b) on the application and at the expense of a county council, provide, by the appointment of local agents or otherwise, for the carrying into effect the objects of this section.

14. *List to be kept by county council.*] A county council shall keep a list of the owners and occupiers of small holdings sold or let by them, and a map or plan showing the size, boundaries, and situation of each small holding so sold or let.

15. *Right of purchase, if land diverted from agriculture.*] If, at any time after the restrictive conditions imposed by this Act have ceased to attach to a small holding, the owner of the holding desires to use the holding for purposes other than agriculture, he shall before so doing, whether the holding is situate within a town or built upon or not, offer the holding for sale, first to the county council from whom the holding was purchased, and secondly to the person or persons (if any) then entitled to the lands from which the holding was originally severed, and sections one hundred and twenty-seven to one hundred and thirty of the Lands Clauses Consolidation Act, 1845 [8 & 9 Vict. c. 18], shall apply as if the owner of the small holding were the promoter of the undertaking, and the holding were superfluous lands within the meaning of those sections.

16. *Letting of land unsold, and sale of superfluous or unsuitable land.*]—(1) A county council shall, if practicable, sell or let as small holdings, and in accordance with this Act, any land acquired by them for small holdings, but, if the council are of opinion that any such land is not needed, or is unsuitable, for small holdings, or cannot be sold or let under the provisions of this Act, or that some more suitable land is available, they may sell or let the land otherwise than under those provisions, or exchange the land for other land more suitable for small holdings, and may pay or receive money for

equality of exchange, and may erect such buildings or execute such other works as will in the opinion of the council enable the land to be sold or let without loss.

(2) The council may also, while any sale or lease of a holding is pending, temporarily let or manage the holding for such time and in such manner as they think expedient.

(3) Sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845 [8 & 9 Vict. c. 18] (relating to the right of pre-emption of superfluous lands), shall apply upon any sale in pursuance of this section before any such buildings or works as aforesaid are erected or executed on the land proposed to be sold, but, save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not apply.

17. *Restrictions on powers of council.*]—(1) A county council shall not take any proceedings under the provisions of this Act relating to small holdings whereby the annual charge for the time being on the county fund, for the purposes of those provisions and of any enactment repealed by this Act, including the annual payments in respect of the loans raised for those purposes, is, in the opinion of the council, likely to exceed in any one year the amount produced by a rate of a penny in the pound, and, where the said charge at any time is equal or nearly equal to that amount, no further land shall be purchased for small holdings until the charge has been decreased so as to admit of the further purchase without the charge exceeding the said amount.

(2) For the purposes of this section the expression "charge" means the net charge on the county fund calculated in accordance with regulations made by the Local Government Board after taking into account all receipts from or on account of small holdings or otherwise under the provisions of this Act relating to small holdings.

18. *Delegation of powers to councils of boroughs or urban districts.*] A county council may make arrangements with the council of any borough or urban district in the county for the exercise by the council of that borough or district, as agents for the county council, on such terms and subject to such conditions as may be agreed on, of any powers of the county council in respect of the acquisition, adaptation, and management of small holdings for the borough or district, and the council of the borough or district may, as part of the arrangement, undertake to pay the whole or any part of the loss (if any) incurred in connexion with those small holdings, and any sum payable in pursuance of any such undertaking shall be defrayed as part of the general expenses of the council in the execution of the Public Health Acts.

*Loans by County Councils to Tenants Purchasing Small Holdings.*

19. *Power of county council to advance money for purchase of small holdings.*]—(1) Where the tenant of a small holding has agreed with his landlord for the purchase of the holding, the county council of the county in which the holding or any part of it is situate may, if they think fit, advance to the tenant on the security of the holding an amount not exceeding four-fifths of the purchase money thereof.

(2) The provisions of this Act with respect to the purchase money secured by a charge on a small holding sold by a county council, and with respect to any small holding so sold, shall apply to an advance made and a holding purchased under this section, as if the advance was the purchase money, save that the county council shall not guarantee the title of the purchaser of the holding.

(3) No advance shall be made by a county council under this section, unless they are satisfied that the title to the holding is good, that the sale is made in good faith, and that the price is reasonable.

*Powers of Board of Agriculture and Fisheries.*

20. *Power of Board to provide small holdings.*] The Board may, if after inquiry they think it advisable to do so with a view to

demonstrating the feasibility of the establishment of small holdings in any locality, exercise the powers conferred on county councils by the provisions of this Act relating to small holdings (except the powers of acquiring land compulsorily and of borrowing), and those provisions shall apply as if references to the Board were substituted for references to a county council; but the expenses of the Board shall be defrayed out of, and their receipts paid into, the Small Holdings Account, and no part thereof shall be paid out of any rate.

**21. Power of Board to repay part of expenses incurred by council.]** The Board may, if they think fit, and subject to regulations made by the Board with the approval of the Treasury, repay or undertake to repay to a county council, out of the Small Holdings Account, the whole or any part of the expenses incurred by the council in proceedings in relation to the acquisition of land for the purposes of small holdings, and the amount so repaid shall not be treated as part of the costs incurred by the council in relation to land for the purposes of sections seven and nine of this Act, but nothing in this section shall authorise the repayment of any part of any purchase money, compensation, or rent payable in respect of the land.

**22. Appointment of advisory and managing committees by Board.]** Where the Commissioners acting in default of a county council, or the Board for the purpose of demonstrating the feasibility of the establishment of small holdings, exercise the powers of a county council under the provisions of this Act relating to small holdings, the Board may appoint such advisory and managing committees as they think fit, with such powers and duties as may be conferred or imposed on them, and may, with the consent of the Treasury, pay out of the Small Holdings Account all reasonable travelling and out-of-pocket expenses of the members of committees so appointed:

Provided that where the expenses are incurred for the purposes of the powers exercised by the Commissioners acting in default of a county council, those expenses shall be treated as expenses incurred by the Commissioners in the exercise of the powers of the county council.

## PART II.

### ALLOTMENTS.

#### Provision of Allotments.

**23. Duty of certain councils to provide allotments.]**—(1) If the council of any borough, urban district, or parish are of opinion that there is a demand for allotments for the labouring population in the borough, urban district, or parish, and that such allotments cannot be obtained at a reasonable rent and on reasonable conditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same, the council shall provide a sufficient number of allotments, and shall let such allotments to persons belonging to the labouring population resident in the borough, district, or parish, and desiring to take the same.

(2) On a representation in writing to the council of any borough, urban district, or parish, by any six registered parliamentary electors or rate-payers resident in the borough, urban district, or parish, that the circumstances of the borough, urban district, or parish are such that it is the duty of the council to take proceedings under this Part of this Act therein, the council shall take such representation into consideration.

(3) For the purpose of this section, the expression "reasonable rent" means the rent, exclusive of rates, taxes, and tithe rent-charge, which a person taking an allotment might reasonably be expected to pay, taking one year with another, to a landlord, having regard to the value of similar land in the neighbourhood, to the extent and situation of allotment, to the expenses of adapting the land to the purposes of the allotment, and to the repairs and other outgoings payable by the landlord, and to the cost and risk of collecting the rents of and otherwise managing allotments.

(4) The duty of a council to provide allotments under this Act shall not include the duty of providing allotments exceeding one acre in extent.

**24. Duty of county councils to act in default of district and parish councils.]**—(1) It shall be the duty of a county council to ascertain the extent to which there is a demand for allotments in the several urban districts (other than boroughs) and rural parishes in the county, or would be a demand if suitable land were available, and the extent to which it is reasonably practicable, having regard to the provisions of this Act, to satisfy any such demand, and for that purpose to co-operate with such authorities, associations, and persons as they think best qualified to assist them, and take such other steps as they think necessary.

(2) The county council, if satisfied that the circumstances are such that land for allotments should be acquired by them under this section, shall pass a resolution to that effect, and thereupon the powers and duties of the district or parish council under the provisions of this Act relating to allotments shall be transferred from that council to the county council, and the county council, in substitution for that council, shall proceed to acquire land in accordance with this Act, and otherwise execute this Act in the district or parish:

Provided that this section shall not affect the property in, or any powers or duties of the district or parish council in relation to, any land which, before the passing of the resolution, was acquired by the district or parish council under this Act, or any enactment repealed by this Act.

(3) Where the powers of the district or parish council are, by virtue of this section, transferred to the county council, the following provisions shall have effect:—

(a) The provisions of this Act relating to allotments shall apply with the modifications necessary for giving effect to this section:—  
(b) The county council may borrow for the purposes of those provisions subject to the conditions, in the manner, and on the security of the rate, subject to, in, and on the security of which the district or parish council might have borrowed under those provisions. The council shall have power to charge the said rate with the repayment of the principal and interest of the loan, and the loan with the interest thereon shall be repaid by the district or parish council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that rate by the district or parish council:

(c) The county council shall keep separate accounts of all receipts and expenditure under this section:

(d) All sums received by the county council in respect of any land acquired under this section or the corresponding provision of any enactment repealed by this Act, otherwise than from any sale or exchange, in so far as they are not required for the payment of expenses incurred by them in respect of such land, shall be paid to the district or parish council:

(e) The county council may delegate to the district or parish council any powers under this Act relating to the management of the allotments, and the letting and use thereof, and the recovery of the rent and of possession thereof; and, subject to the terms of the delegation, all expenses and receipts arising in the exercise of the powers so delegated shall be paid and dealt with as expenses and receipts of the district or parish council under this Act:

(f) The county council, on the request of the district or parish council, may, by order under their seal, transfer to that council all or any of the powers, duties, property, and liabilities vested in and imposed on the council by virtue of this section or the corresponding provision of any enactment repealed by this Act, as regards the district or parish, and the property so transferred shall be deemed to have been acquired by that council under this Act, and that council shall act accordingly.

(4) If the Board are, in relation to any urban district (other than a borough) or rural parish, satisfied, after holding a local inquiry at which the county council and the council of the district or parish, and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard, that the county council have failed to fulfil their obligations under this section, the Board may by order transfer to the Commissioners all or any of the powers of the county council under this section in relation to the district or parish, and this section shall apply as if references to the Commissioners were substituted for references to the county council and with such other adaptations as may be made by the order.

#### Powers of Councils in Relation to the Provision of Allotments.

**25. Acquisition of land for purpose of Act.]**—(1) The council of a borough, urban district, or parish may, for the purpose of providing allotments, by agreement purchase or take on lease land, whether situate within or without their borough, district, or parish.

(2) If a council are unable to acquire by agreement, and on reasonable terms, suitable land for the purpose of allotments, they may acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land.

(3) A council shall not under this Act acquire land for allotments save at such price or rent that in their opinion all expenses, except such expenses as are incurred in making roads to be used by the public, incurred by them in acquiring the land and otherwise in relation to the allotments, may reasonably be expected to be recouped out of the rents obtained in respect thereof.

**26. Improvement and adaptation of land for allotments.]**—(1) The council of a borough, urban district, or parish may improve any land acquired by them for allotments and adapt the same for letting in allotments, by draining, fencing, and dividing the same, acquiring approaches, making roads and otherwise, as they think fit, and may from time to time do such things as may be necessary for maintaining such drains, fences, approaches, and roads, or otherwise for maintaining the allotments in a proper condition.

(2) The council may also adapt the land for allotments by erecting buildings, and so that not more than one dwelling-house shall be erected for occupation with any one allotment; and no dwelling-house shall be erected for occupation with any allotment of less than one acre.

**27. Provisions as to letting of allotments.]**—(1) The rents of the allotments shall be fixed at an amount not less than such as may reasonably be expected to ensure the council providing the allotments from loss; but in calculating such loss any expenses incurred in an unsuccessful attempt to acquire land for allotments shall be excluded and, subject as aforesaid, such rents may be from time to time charged as are reasonable, having regard to the agricultural value of the land, and not more than a quarter's rent shall be required to be paid in advance in any case where it is deemed necessary by the council to require the payment of rent in advance.

(2) The council providing the allotments shall, for the purposes of all rates and taxes, and all tithe rent-charge payable by an occupier, be deemed to be the occupiers of the allotments which are let, but they shall cause the sum from time to time paid by way of such rates, taxes, and tithe rent-charge in respect of the allotments to be apportioned among them, and cause the sum so apportioned in respect of each allotment to be certified to the tenant thereof, and such sum shall be added to the rent otherwise payable by the tenant in respect of such allotment, and shall be deemed to be part of the rent, and be recoverable accordingly:

Provided that for the purposes of the parliamentary franchise, and the municipal and all other local franchises, the tenants shall notwithstanding this provision be deemed to be the occupiers, and such rates shall be deemed to have been paid by them.

(3) One person shall not hold any allotment or allotments acquired under this Part of this Act, or any enactment hereby repealed, exceeding five acres:

Provided that any part of the land acquired by a council for the purposes of allotments which exceeds five acres may be adapted for letting and let as an allotment, if the county council are satisfied by the council that it is convenient and desirable that it should be so let and consent to such letting accordingly.

(4) An allotment shall not be sublet.

(5) If at any time an allotment cannot be let in accordance with the provisions of this Act and the rules made thereunder, the same may be let to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable possession thereof to be resumed within a period not exceeding twelve months if it should at any time be required to be let under the provisions aforesaid.

(6) A council shall have the same power of letting one or more allotments to persons working on a co-operative system or to an association formed for the purposes of creating or promoting the creation of allotments as may be exercised as respects small holdings by a county council.

28. *Rules as to letting allotments.*—(1) Subject to the provisions of this Act, a borough, urban district, or parish council may make such rules as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for carrying the provisions of this Part of this Act into effect.

(2) Rules under this section may define the persons eligible to be tenants of allotments, the notices to be given for the letting thereof, the size of the allotments, the conditions under which they are to be cultivated, and the rent to be paid for them.

(3) All such rules shall make provision for reasonable notice to be given to a tenant of any allotment of the determination of his tenancy.

Rules under this section shall not be of any force unless and until they have been confirmed by the Board in like manner and subject to the like provisions as in the case of bye-laws required to be confirmed by the Local Government Board under the Public Health Acts.

(4) Rules for the time being in force under this section shall be binding on all persons whatsoever; and the council shall cause them to be from time to time made known, in such manner as the council think fit, to all persons interested, and shall cause a copy thereof to be given gratis to any inhabitant of the district or parish demanding the same.

29. *Management of allotments.*—(1) The council of a borough, urban district, or parish may from time to time appoint, and, when appointed, remove allotment managers of land acquired by the council for allotments, and the allotment managers shall consist either partly of members of the council and partly of other persons, or wholly of other persons, so that in either case such other persons be persons residing in the locality and contributing to the rate out of which the expenses of the council under this Act are paid.

(2) The proceedings and powers of allotment managers shall be such as, subject to the provisions of this Act, may be directed by the council; the allotment managers may be empowered by the council to do anything in relation to the management of the allotments which the council are authorised to do and to incur expenses to such amount as the council authorise, and any expenses properly so incurred shall be deemed to be expenses of the council under this Act.

30. *Recovery of rent and possession of allotments.*—(1) The rent for an allotment let by a council in pursuance of this Act, and the possession of such an allotment in the case of any notice to quit, or failure to deliver up possession thereof as required by law, may be recovered by the council as landlords, in the like manner as in any other case of landlord and tenant.

(2) If the rent for any allotment is in arrear for not less than forty days, or if it appears to the council that the tenant of an allotment not

less than three months after the commencement of the tenancy thereof has not duly observed the rules affecting the allotment made by or in pursuance of this Act, or is resident more than one mile out of the borough, district, or parish for which the allotments are provided, the council may serve upon the tenant, or, if he is residing out of the borough, district, or parish, leave at his last known place of abode in the borough, district, or parish, or fix in some conspicuous manner on the allotment, a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon the tenancy shall be determined accordingly:

Provided that in every such case the council in default of agreement between the incoming and outgoing tenant shall on demand pay to the tenant whose tenancy is so determined any compensation due to him as an outgoing tenant, and the amount of such compensation shall be assessed by an arbitrator appointed by the council or, if the tenant so elect, either by an arbitrator appointed under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 [50 & 51 Vict. c. 26], or under the Agricultural Holdings Act, 1908 [8 Edw. 7, c. 28].

(3) Upon the recovery of an allotment from any tenant, the court directing the recovery may stay delivery of possession until payment of the compensation (if any) due to the outgoing tenant has been made or secured to the satisfaction of the court.

31. *List of allotments.*—(1) The council of a borough, urban district, or parish shall cause a list to be kept showing the particulars of the tenancy, acreage, and rent of every allotment let, and of the unlet allotments.

(2) The list shall be open to the inspection of ratepayers in the borough, district, or parish for which the allotments have been provided, in such manner as may be provided by the rules made under this Act by the council, and any ratepayer of such borough, district, or parish, without paying any fee, may take copies of or extracts from the list.

32. *Sale of superfluous or unsuitable land.*—(1) Where the council of any borough, urban district, or parish are of opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available, they may, with the sanction of the county council, sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.

(2) The proceeds of a sale under this Act of land acquired for allotments, and any money received by the council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by the council for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable.

(3) Sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845 (relating to the right of pre-emption of superfluous lands), shall apply upon any sale in pursuance of this section of any land, but, save as aforesaid, the provisions of the Lands Clauses Consolidation Act, 1845, with respect to the sale of superfluous lands shall not apply.

33. *Transfer of allotments to borough, district, and parish councils.*—(1) The allotment wardens under the Inclosure Acts, 1845 to 1882, having the management of any land appropriated under those Acts either before or after the passing of this Act for allotments or field gardens for the labouring poor of any place, may, by

agreement with the council of the borough, urban district, or parish, within whose borough, district, or parish that place is wholly or partly situate, transfer the management of that land to the council, upon such terms and conditions as may be agreed upon with the sanction, as regards the allotment wardens, of the Board, and thereupon the land shall vest in the council.

(2) All trustees within the meaning of the Allotments Extension Act, 1882 [45 & 46 Vict. c. 80], required or authorised by that or any other Act to let lands in allotments to cottagers, labourers, journeymen, or others in any place, may, if they think fit, in lieu of letting the land in manner provided by the said Acts, sell or let the land to the council of the borough, urban district, or parish in which such place is wholly or partly situate, upon such terms as may be agreed upon, with the sanction, as regards the trustees, of the Charity Commissioners or the Board of Education, as the case may require.

(3) Where, as respects any rural parish, any Act constitutes any persons wardens of allotments, or authorises or requires the appointment or election of any wardens, committee, or managers for the purpose of allotments, the powers and duties of the wardens, committee, or managers shall, subject to the provisions of this Act, be exercised and performed by the parish council, or, in the case of a parish not having a parish council, by persons appointed by the parish meeting, and it shall not be necessary to make the said appointment or to hold the said election.

(4) The provisions of this Act relating to allotments shall apply to land vested in, or the management whereof has been transferred to, a council under this section or the corresponding provision of any enactment repealed by this Act in like manner as if the land had been acquired by the council under the general powers of this Part of this Act.

#### Supplemental.

34. *Power to make scheme for provision of common pasture.*—(1) Where it appears to the council of any borough, urban district, or parish that, as regards their borough, district, or parish, land can be acquired for affording common pasture at such price or rent that all expenses incurred by the council in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the labouring population, the council may submit to the council of the county in which the borough, district, or parish is wholly or partly situate a scheme for providing such common pasture.

(2) The county council, if satisfied of the expediency of such scheme, may by order authorise the council which submitted it to carry it into effect, and, upon such an order being made, the provisions of this Act relating to allotments shall, with the necessary modifications, apply in like manner as if "allotments" in those provisions included common pasture, and "rent" included a charge for turning out an animal:

Provided that the rules made under those provisions may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

35. *Use of schoolroom free of charge.*—(1) Any room in a public elementary school in respect of which a grant is made out of moneys provided by Parliament may, except while the room is being used for educational purposes, be used free of charge for the purposes of this Part of this Act by the county council, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act, but any damage done to the room and any expense incurred by the persons having control over the room on account of its being so used shall be paid by the county council or the persons calling the meeting.

(2) Nothing in this section shall give any right to hold a public meeting in a schoolroom.

(a) Unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation to the council of a borough, urban district, or parish under this Part of this Act, has been given, in the case of a school provided by the local education authority to the clerk of that authority, and in any other case to one of the managers of the school; or

(b) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith, after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting.

(3) If the persons calling the meeting fail to obtain the use of a schoolroom under this section, they may appeal to the small holdings and allotments committee under this Act, and the committee shall forthwith decide the appeal, and make such order respecting the use of the room as seems just.

(4) Nothing in this section shall affect the powers as to the use of schoolrooms conferred by section four of the Local Government Act, 1894 [56 & 57 Vict. c. 73].

**36. Application to London.**—The powers as to allotments conferred on borough, urban district, and parish councils by this Act may in London be exercised by the London County Council, and the provisions of this Act as to allotments shall apply accordingly, except that, subject to the provisions of this Act, the expenses shall be defrayed and money borrowed under and in accordance with the provisions of the Local Government Act, 1888 [51 & 52 Vict. c. 41].

**37. Application to county boroughs.**—Such of the provisions of this Part of this Act as require the sanction of, submission to, or order of, a county council shall not apply in the case of a county borough.

### PART III.

#### GENERAL.

##### Acquisition of Land.

**38. Purchase of land by agreement.**—For the purpose of the purchase of land by agreement under this Act by a council, the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875 [38 & 39 Vict. c. 55], shall apply as if the council were referred to therein.

**39. Procedure for compulsory acquisition of land.**—(1) Where a council propose to purchase land compulsorily under this Act, the council may, subject to the provisions of Part I. of the First Schedule to this Act, submit to the Board an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) Where a council propose to hire land compulsorily, the council may submit to the Board an order for the compulsory hiring of the land specified in the order for a period not less than fourteen nor more than thirty-five years, and the provisions of Part I. of the First Schedule to this Act shall apply to the order in like manner as it applies to an order for compulsory purchase, with the substitution of "hiring" for "purchase," and with the modifications set out in Part II. of that Schedule.

(3) An order under this section shall be of no force unless and until it is confirmed by the Board, and the Board may, subject to the pro-

visions of the First Schedule to this Act, confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(4) An order under this section may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired, and every such order shall, if so required by the owner of the land to be acquired, provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by such owner and his tenants of all means of access, drainage, water supply, and other similar conveniences theretofore used or enjoyed by them over the land to be acquired: Provided that, notwithstanding anything contained in this subsection, no new easement created by or in pursuance of the order over land hired by a council shall continue beyond the determination of such hiring.

(5) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase or hiring being compulsorily.

(6) Where land authorised to be compulsorily hired by an order under this section is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession shall have the like effect as if it were a lease authorised by section eighteen of the Conveyancing and Law of Property Act, 1881 [44 & 45 Vict. c. 41].

(7) Where the council proposing to acquire land compulsorily is a parish council, the council shall, instead of themselves making and submitting to the Board the order, represent the case to the county council, and thereupon the county council may, on behalf of the parish council, exercise the powers in relation to compulsory purchase or hiring conferred on councils by this Act, and the order shall be carried into effect by the county council, but the land shall be assured or demised to the parish council, and all expenses incurred by the county council shall be paid by the parish council:

Provided that, if the parish council are aggrieved by the refusal of the county council to proceed under this section, the parish council may petition the Board, and thereupon the Board, after such inquiry as they think fit, may make such an order as the county council might have made, and this sub-section shall apply as if the order had been made by the county council:

(8) If, after the determination of the amount of the compensation (including in the case of land hired compulsorily the rent) to be paid to any person in respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may at any time within six weeks after the determination of the amount by notice in writing withdraw any notice to treat served on that person or on any other person interested in the land, and in such case any person on whom such a notice of withdrawal has been served shall be entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation shall, in default of agreement, be determined by arbitration:

Provided that in every case in which the notice of withdrawal is given by the Commissioners acting in default of the council all compensation payable under this sub-section shall be paid out of the Small Holdings Account.

**40. Powers of certain limited owners to sell and lease land for small holdings or allotments.**—(1) Any person having power to lease land for agricultural purposes for a limited term, whether subject to any consent or conditions or not, may, subject to the like consent and conditions (if any),

lease land to a council for the purposes of small holdings or allotments for a term not exceeding thirty-five years, either with or without such right of renewal as is conferred by this Act in the case of land hired compulsorily for those purposes.

(2) The like powers of leasing may be exercised, in the case of land belonging to the Crown, by the Commissioners of Woods, with the consent of the Treasury, in the case of land forming part of the possessions of the Duchy of Lancaster, by the Chancellor and Council of the Duchy of Lancaster by deed under the seal of the Duchy in the name of His Majesty, His heirs and successors, and, in the case of land forming part of the possessions of the Duchy of Cornwall, by the Duke of Cornwall or other the persons for the time being having power to dispose of land belonging to that Duchy.

(3) The like powers of leasing may be exercised in the case of glebe land or other land belonging to an ecclesiastical benefice by the incumbent thereof with the consent of the Ecclesiastical Commissioners alone upon such terms and conditions and in such manner as the Ecclesiastical Commissioners may approve.

(4) Where a person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, sells, exchanges, or leases any settled land to a county council for the purposes of small holdings, the sale, exchange, or lease may be made at such a price, or for such consideration, or at such rent, as, having regard to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained.

(5) A person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, may grant the settled land, or a part thereof, to a county council for the purposes of small holdings in perpetuity, at a fee farm or other rent secured by condition of re-entry, or otherwise as may be agreed upon.

**41. Restrictions on the acquisition of land.**—(1) No land shall be authorised by an order under this Act to be acquired compulsorily which at the date of the order forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which is woodland not wholly surrounded by or adjacent to land acquired by a council under this Act, or which at that date is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archaeological interest.

(2) A council in making, and the Board in confirming, an order for the compulsory acquisition of land shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose, where part only of a holding is taken, shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith, and shall also, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

(3) No holding of fifty acres or less in extent, nor any part of any such holding, shall be authorised by an order under this Act to be acquired compulsorily for the purposes of small holdings or allotments.

**42. Grazing rights, &c., to be attached to small holdings or allotments.**—(1) The powers of a council to acquire land for small holdings or allotments shall, subject to the restrictions by this Act imposed, include power to acquire land for the purpose of attaching to small holdings or allotments providing the council rights of grazing and other similar rights over the land so acquired, and to acquire for that purpose stints and other alienable common rights of grazing.

(2) Any rights created or acquired by the council under this section shall be attached to the small holdings or allotments in such manner and subject to such regulations as the council think expedient.

(3) Where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any small holding in such manner and subject to such regulations as they think expedient.

**43. Compensation for loss of employment by labourers.**—(1) Where a labourer, who has been regularly employed on any land acquired by a county council for small holdings, proves to the satisfaction of the county council that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the county council may pay to him such compensation as they think just for his loss of employment or for his expenses in moving to another locality, and any sum so paid shall be treated as part of the expenses of the acquisition of the land.

#### Provisions affecting Land acquired.

**44. Power of Council to renew tenancy of land compulsorily hired.**—(1) Where a council has hired land compulsorily for small holdings or allotments, the council may, by giving to the landlord not more than two years nor less than one year before the expiration of the tenancy notice in writing, renew the tenancy for such term, not being less than fourteen nor more than thirty-five years, as may be specified in the notice, and at such rent as, in default of agreement, may be determined by valuation by a valuer appointed by the Board, but otherwise on the same terms and conditions as the original lease, and so from time to time :

Provided that, if on any such notice being given, the landlord proves to the satisfaction of the Board that any land included in the tenancy is required for the amenity or convenience of any dwelling-house, then such land shall be excluded from the renewed tenancy.

(2) In assessing the rent to be paid under this section the valuer shall not take into account any increase in the value of the holding—

- (a) due to improvements in respect of which the council would have been entitled to compensation, if instead of renewing the tenancy the council had quitted the land on the determination of the tenancy; or
- (b) due to any use to which the land might otherwise be put during the renewed term, being a use in respect of which the landlord is entitled to resume possession of the land under this Act; or
- (c) due to the establishment by the council of other small holdings or allotments in the neighbourhood, or any depreciation in the value of the land in respect of which the landlord would have been entitled to compensation if the council had so quitted the land as aforesaid.

**45. Interchange of land for small holdings and allotments.**—(1) A county council may sell or let to a borough, urban district, or parish council for the purpose of allotments any land acquired by them for small holdings, and a borough, urban district, or parish council may sell or let to the county council for the purpose of small holdings any land acquired by them for allotments, and the provisions of the Lands Clauses Acts with respect to the sale of superfluous land shall not apply on any such sale.

**46. Power to resume possession of land hired compulsorily.**—(1) Where land has been hired by a council compulsorily for small holdings or allotments, and the land or any part thereof at any time during the tenancy thereof by the council is shown to the satisfaction of the Board to be required by the landlord to be used for building, mining, or other industrial purposes, or for roads necessary therefor, it shall be lawful for the landlord to resume possession of the land or part thereof upon giving to the council twelve months' previous notice in writing of his intention so to do; and if a part only of the land is resumed,

the rent payable by the council shall as from the date of resumption be reduced by such sum as in default of agreement may be determined by valuation by a valuer appointed by the Board.

(2) Where the land has been hired compulsorily by the Commissioners acting in default of a county council, any question as to the right of the landlord to resume possession of the land or any part thereof under this section shall be determined by an arbitrator appointed by the Lord Chief Justice of England.

**47. Compensation for improvements.**—(1) Where a council has let a small holding or allotment to any tenant, the tenant shall as against the council have the same rights with respect to compensation for the improvements mentioned in Part I. of the Second Schedule to this Act as he would have had if the holding had been a holding to which section forty-two of the Agricultural Holdings Act, 1908, applied :

Provided that the tenant shall not be entitled to compensation in respect of any such improvement if executed contrary to an express prohibition in writing by the council affecting either the whole or any part of the holding or allotment; but, if the tenant feels aggrieved by any such prohibition, he may appeal to the Board, who may confirm, vary, or annul the prohibition, and the decision of the Board shall be final.

(2) Where land has been hired by a council for small holdings or allotments, the council shall (subject in the case of land hired by agreement to any agreement to the contrary) be entitled at the determination of the tenancy on quitting the land to compensation under the Agricultural Holdings Act, 1908, for any improvement mentioned in Part I. of the Second Schedule to this Act, and for any improvement mentioned in Part II. of that Schedule which was necessary or proper to adapt the land for small holdings or allotments, as if the land were a holding to which section forty-two of the Agricultural Holdings Act, 1908, applied, and the improvements mentioned in Part II. of the said Schedule were improvements mentioned in Part III. of the First Schedule to the Agricultural Holdings Act, 1908 :

Provided that, in the case of land hired compulsorily, the amount of the compensation payable to the council for those improvements shall be such sum as fairly represents the increase (if any) in the value to the landlord and his successors in title of the holding due to those improvements.

(3) The tenant of an allotment to which Part II. of this Act applies may, if he so elects, claim compensation for improvements under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 [50 & 51 Vict. c. 26], instead of under the Agricultural Holdings Act, 1908, as amended by this section, notwithstanding that the allotment exceeds two acres in extent.

(4) A tenant of any small holding or allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation, and may remove any toolhouse, shed, greenhouse, fowlhouse, or pigsty built or acquired by him for which he has no claim for compensation.

**48. Provisions as to glebe lands.**—In the case of glebe land or other land belonging to an ecclesiastical benefice hired by a council for the purposes of small holdings or allotments—

- (1) The provisions of the Ecclesiastical Dilapidations Act, 1871 [34 & 35 Vict. c. 43], shall not during the continuance of the tenancy be applicable to the buildings upon the land:
- (2) At the determination of the tenancy, on the council quitting the land, or at any time within twelve months thereafter, the incumbent of the benefice to which the land belongs may apply to the Ecclesiastical Commissioners for their consent to the removal of any buildings which have been erected on the land for the purpose of adapting the land for small holdings or allotments, and, on proof to the satisfaction of the Commissioners that it is to the interest of the benefice that they should be removed, the incumbent may, with the consent of the Commissioners, and subject

to such directions as they may give, pull down any such buildings and dispose of the materials thereof, and any proceeds shall be paid to the Commissioners to be by them applied to the improvement of the benefice in such manner as the Commissioners may direct.

#### Co-operative Societies, &c.

**49. Co-operative societies, &c.**—(1) A county council may promote the formation or extension of, and may, subject to the provisions of this section, assist, societies on a co-operative basis, having for their object, or one of their objects, the provision or the profitable working of small holdings or allotments, whether in relation to the purchase of requisites, the sale of produce, credit banking, or insurance, or otherwise, and may employ as their agents for the purpose any such society as is mentioned in sub-section (4) of this section.

(2) The county council, with the consent of, and subject to regulations made by, the Local Government Board, may for the purpose of assisting a society make grants or advances to the society, or guarantee advances made to the society, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the council think fit.

(3) Where the Board themselves provide small holdings under the provisions of this Act, they may, with respect to any such society carrying on business or intending to carry on business in the neighbourhood of those small holdings, exercise the powers of a county council under this section, and the provisions of this section shall apply accordingly, except that references to the Treasury shall be substituted for references to the Local Government Board, and that the expenses and receipts of the Board under this section shall be paid out of and into the Small Holdings Account.

(4) The Board with the consent of the Treasury may out of the Small Holdings Account make grants, upon such terms as the Board may determine, to any society having as its object or one of its objects the promotion of co-operation in connection with the cultivation of small holdings or allotments.

#### Small Holdings and Allotments Committees.

**50. Small holdings and allotments committees.**—(1) Every county council shall establish a small holdings and allotments committee, consisting either wholly or partly of members of the council, but the members of the council shall be a majority, and all matters relating to the exercise and performance by the council of their powers and duties under this Act (except the power of raising a rate or borrowing money) shall stand referred to the small holdings and allotments committee, and the council before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the small holdings and allotments committee with respect to the matter in question, and the council may also delegate to the small holdings and allotments committee, with or without restrictions and conditions, as they think fit, any of their powers under this Act except the power of raising a rate or borrowing money.

(2) The small holdings and allotments committee may delegate any of their powers to sub-committees, consisting either wholly or partly of members of the committee, and in appointing any sub-committee to which is committed the powers of management of small holdings shall have regard to the advisability of including amongst the members of the sub-committee members of the councils of the boroughs, urban districts, or parishes in which the holdings are situate, or for which they are provided, and other persons acquainted with the needs and circumstances of the area for which the sub-committee act.

(3) Where any receipts or payments of money under this Act are entrusted by the county council to the small holdings and allotments committee, or any sub-committee thereof, the accounts of those receipts and payments shall be accounts of the county council, and made up and audited accordingly.

(4) This section, so far as relates to small holdings, shall apply to the council of a county borough in like manner as it applies to a county council, but, so far as it relates to allotments and sub-committees, shall not apply to the council of a county borough, without prejudice however to the power of such a council to appoint their small holdings committee, if duly qualified, to be allotment managers in pursuance of Part II. of this Act.

*Expenses and Borrowing.*

51. *Small Holdings Account.*—(1) For the purposes of this Act "The Small Holdings Account," opened at the Bank of England under the Small Holdings and Allotments Act, 1907 [7 Edw. 7, c. 54], shall be continued.

(2) There shall be paid to this account—

- (a) such money as may from time to time be provided by Parliament towards defraying the costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account; and
- (b) all sums received by the Board and directed by this Act to be paid into the Small Holdings Account.

(3) The costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account shall be paid by the Board out of the money standing to that account.

(4) At the end of every financial year, accounts of the receipts and expenditure of the Small Holdings Account shall be made up in such form and with such particulars as may be directed by the Treasury, and shall be audited by the Comptroller and Auditor-General as public accounts in accordance with such regulations as the Treasury may make, and shall be laid before Parliament, together with his report thereon.

(5) Payments out of, and into, the Small Holdings Account, and all other matters relating to the account, and to the money standing to the credit of the account, shall be paid and regulated in such manner as the Treasury direct.

52. *Borrowing powers and expenses.*—(1) A county council may borrow money for the purposes of the provisions of this Act relating to small holdings and for the purposes of making grants or advances to co-operative societies in accordance with the Local Government Act, 1888 [51 & 52 Vict. c. 41], or, if the council of a county borough, with the Public Health Acts, except that any money so borrowed shall, notwithstanding anything in either of those Acts, be repaid within such period, not exceeding—

(a) where the purpose for which the money is borrowed is the purchase of land, eighty years; and

(b) in any other case, fifty years, as the council, with the consent of the Local Government Board, determine in each case: Provided that money so borrowed shall not be reckoned as part of the total debt of a county for the purpose of section sixty-nine, sub-section two, of the Local Government Act, 1888.

(2) The Public Works Loans Commissioners may, in manner provided by the Public Works Loans Act, 1875 [38 & 39 Vict. c. 89], lend any money which may be borrowed by a county council for such purposes as aforesaid:

Provided that—

(a) the loan shall be made at the minimum rate allowed for the time being for loans out of the local loans fund; and

(b) if the Local Government Board make a recommendation to that effect, the period for which the loan is made by the Public Works Loans Commissioners may exceed the period allowed under the Public Works Loans Act, 1875, and the Act amending that Act, but the period shall not exceed the period recommended by the Local Government Board, nor, where the purpose of the loan is the purchase of land, eighty years, or in any other case fifty years; and

(c) as between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest.

(3) Any capital money received by a county council in payment or discharge of purchase

money for land sold by them, or in repayment of an advance made by them, shall, subject to the provisions of this Act, be applied, with the sanction of the Local Government Board, either in repayment of debt or for any other purpose for which capital money may be applied.

(4) The expenses incurred by the council of a county borough under the provisions of this Act relating to small holdings shall be defrayed out of the borough fund or borough rate, and any money borrowed by such a council shall be borrowed on the security of the borough fund or borough rate.

53. *Expenses and borrowing.*—(1) All expenses incurred by the council of a borough, urban district, or parish under the provisions of this Act relating to allotments, including allowances to officers of the council for duties under those provisions, and any sums under those provisions repayable by a district or parish council to a county council acting in their default, shall be defrayed—

(a) in the case of a borough or urban district council, as part of the general expenses of their execution of the Public Health Acts; and

(b) in the case of a parish council, as part of the expenses of the council.

(2) All expenses incurred by the county council in executing the said provisions in any district or parish on default of a district or parish council, or incurred by the county council in or incidentally to a local inquiry under those provisions, shall be paid in the first instance out of the county fund as expenses for general county purposes, and, unless defrayed out of moneys received by the council in respect of any land acquired under those provisions otherwise than by sale or exchange, or out of money borrowed as before in this Act mentioned, shall, when the powers and duties of the district or parish council under those provisions are transferred to the county council in pursuance of this Act, be repaid to the county council as a debt by the district or parish council.

(3) The council of a borough, urban district, or parish may borrow for the purposes of acquiring, improving, and adapting land for allotments—

(a) in the case of a borough or urban district council, in like manner and subject to the like conditions as for the purposes of the Public Health Acts; and

(b) in the case of a parish council, under and in accordance with the provisions of the Local Government Act, 1894, but the money so borrowed by a parish council shall not be reckoned as part of the debt of the parish for the purpose of the limitation on borrowing under section twelve of that Act.

(5) Sections two hundred and forty-two and two hundred and forty-three of the Public Health Act, 1875, relating to loans by the Public Works Loan Commissioners to a local authority, shall apply to a loan to a borough or urban district council under this section, and, with the necessary adaptations, to a loan to a parish council under the Local Government Act, 1894, or to a county council lending money to a parish council under that Act, where the purpose for which the loan is required by the parish council is the acquisition, improvement, or adaptation of land under Part II. of this Act, in like manner as if those sections were herein re-enacted and in terms made applicable thereto.

54. *Separate accounts of receipts and expenditure.*—(1) Separate accounts shall be kept of the receipts and expenditure of a council under this Act with respect to small holdings or allotments, and any such receipts shall, subject to the provisions of this Act, be applicable to the purposes of small holdings or allotments, but not for any other purpose except with the consent of the Local Government Board; and, for the purpose of the provisions relating to the audit of accounts, any persons appointed under this Act by a council to exercise and perform powers and duties as to the management of allotments shall be deemed to be officers of the council.

(2) The council of a borough, urban district, or parish shall within one month after the end of every financial year of the council cause an

annual statement, showing their receipts and expenditure with respect to allotments for that year and their liabilities outstanding at the end of that year, to be deposited at some convenient place in the borough, district, or parish, and any ratepayer may without fee inspect and take copies of the statement.

*Supplemental.*

55. *Provisions as to land acquired by Commissioners.*—Any land acquired by the Commissioners under this Act or any enactment repealed by this Act shall be vested in the Board, but the Board may at any time transfer the land to the council at whose expense the land was acquired, and shall so transfer the land on payment of all sums due from the council in connection therewith, and on proof to the satisfaction of the Board that the council are willing to exercise and perform their powers and duties in relation thereto.

56. *Provisions as to Commissioners.*—Anything by this Act required or authorized to be done by or to the Commissioners may be done by or to any one such Commissioner, and any document purporting to be signed by a Commissioner shall be received in evidence without proof of the appointment or handwriting of the Commissioner.

57. *Local inquiries.*—(1) The Board and the Small Holdings Commissioners and other officers of the Board shall have for the purpose of an inquiry in pursuance of this Act the same powers as the Local Government Board and their inspectors respectively have for the purpose of an inquiry under the Public Health Acts.

(2) Notices of the inquiries shall be given and published in accordance with such general or special directions as the Board may give.

(3) A local inquiry by a county council for the purposes of the provisions of this Act relating to allotments shall be held by such one or more members of the small holdings and allotments committee of the council or by such officer of the council or other person as that committee may appoint to hold the inquiry.

58. *Arbitrations and valuations.*—(1) All questions which under this Act are referred to arbitration shall, unless otherwise expressly provided by this Act, be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Act, 1908.

(2) Where an order has been made and confirmed authorizing the compulsory acquisition of land by the Commissioners acting in default of a county council, the arbitrator or valuer, as the case may be, shall be appointed by the Lord Chief Justice of England instead of by the Board.

(3) The remuneration of an arbitrator or valuer appointed under this Act shall be fixed by the Board.

59. *Annual report to Parliament.*—The Board shall make an annual report to Parliament of their proceedings, and of the proceedings of the Commissioners, under this Act, and also of the proceedings of the several county, borough, district, and parish councils under this Act, and for that purpose every such council shall, before such date in every year as the Board may fix, send to the Board a report of their proceedings under this Act during the preceding year.

60. *Saving for existing tenancies.*—Nothing in this Act shall affect the rights and obligations under any tenancy created under any enactment repealed by this Act.

61. *Interpretation.*—(1) For the purposes of this Act—

The expression "small holding" means an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding fifty pounds:

The expression "allotment" includes a field garden:

The expressions "agriculture" and "cultivation" shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live

stock, poultry, or bees, and the growth of fruit, vegetables, and the like: The expression "county" shall mean the area under the authority of a county council: The expression "county council" shall in relation to small holdings include the council of a county borough, and in its application to a county borough the expression "county fund" shall mean the borough fund or borough rate: The expression "prescribed" means prescribed by regulations made by the Board: The expression "landlord," in relation to any land compulsorily hired by a council, means the person for the time being entitled to receive the rent of the land from the council.

(2) In this Act and in the enactments incorporated with this Act the expression "land" shall include any right or easement in or over land.

(3) For the purposes of this Act, any expenses incurred by a council in the enfranchisement of any land acquired by them for small holdings or allotments, or in the purchase or redemption of land tax, or any quit rent, chief rent, tithe, or other rent-charge, or other perpetual annual sum issuing out of land so acquired, shall be deemed to have been incurred in the purchase of the land.

(4) In this Act references to a parish council shall, in the case of a rural parish not having a parish council, include references to the parish meeting.

(5) Any notice required by this Act to be served or given may be sent by registered post.

62. *Repeal.*] The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Provided that—

(a) nothing in this Act shall affect any order, scheme, draft scheme, rules, regulations, report, petition, notice, or other document made, prepared, submitted, served, or given under any enactment so repealed, but every such document shall have effect as if made, prepared, submitted, served, or given under this Act; and

(b) references in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to the corresponding provisions of this Act; and

(c) if any question arises as to whether any power of the Local Government Board under the enactments relating to allotments hereby repealed was thereby transferred to the Board of Agriculture and Fisheries, the question shall be determined by the Local Government Board, whose decision shall be final.

63. *Short title, commencement, and extent.*]—(1) This Act may be cited as the Small Holdings and Allotments Act, 1908.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and nine.

(3) This Act shall not extend to Scotland or Ireland.

#### SCHEDULES.

##### FIRST SCHEDULE.

[Section 39.]

##### PART I.

#### PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A COUNCIL.

(1) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the council and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 [8 & 9 Vict. c. 20], but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration

shall, subject to the provisions of this schedule, apply accordingly.

(2) The order shall be published by the council in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land, as may be prescribed.

(3) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the council and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

(4) Before confirming the order the Board shall consider the report of the person who held the inquiry, and all objections made therat.

(5) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised by or under this Act to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

(6) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.

(7) In construing, for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the council shall be deemed to be the promoters of the undertaking.

(8) When the land is glebe land or other land belonging to an ecclesiastical benefice the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

#### PART II.

#### PROVISIONS AS TO THE COMPULSORY HIRING OF LAND BY A COUNCIL.

[Section 39.]

(1) The Board shall make regulations for the purpose of carrying the order into effect and of protecting the council and the persons interested in the land, and the order shall incorporate such regulations, together with such provisions of the Lands Clauses Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, as may, subject to the prescribed adaptations, appear to the Board necessary or expedient for that purpose.

(2) The order authorising the land to be hired compulsorily shall determine the terms and conditions of the hiring other than the rent, and in particular—

(a) shall provide for the insertion in the lease of covenants by the council to cultivate the land in a proper manner and to pay to the landlord at the determination of the tenancy on the council quitting the land compensation for any depreciation of the land by reason of any failure by the council, or any person deriving the title under

them, to observe such covenants, or by reason of any user of the land by the council or such person as aforesaid, and (unless otherwise agreed) to keep the buildings and premises demised in repair; and

(b) shall not authorise the breaking up of pasture unless the Board are satisfied that it can be so broken up without depreciating the value of the land, or that the circumstances are such that small holdings cannot otherwise be successfully cultivated; and

(c) shall not, except with the consent of the landlord, confer on the council any right to fell or cut timber or trees or any right to take, sell, or carry away any minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for small holdings or allotments, and except upon payment of compensation for minerals, gravel, sand, or clay so used.

#### (3) The determination of—

(a) The amount of the rent to be paid by the council for the land compulsorily hired;

(b) The amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise;

(c) Where part only of a holding held for an unexpired term is hired, the rent to be paid for the residue of the holding during the remainder of that term;

shall in default of agreement be by valuation by a single valuer appointed by the Board: Provided that, if the land hired is in the occupation of a tenant, he may by notice in writing served on the council before the determination of his tenancy, require that any claim by him against the council which, under the Agricultural Holdings Act, 1908, might be referred to arbitration under that Act, shall be so referred, and in such case those claims shall be determined by arbitration under that Act and not by valuation under this Act.

(4) The valuer, in fixing the rent to be paid for the land compulsorily hired, shall take into consideration the rent (if any) at which the land has been let and the annual value at which the land is assessed for purposes of income tax or rating, the loss (if any) caused to the owner by severance, the terms and conditions of the hiring (including any reservation of sporting or fishing rights), and all the other circumstances connected with the land, but shall not make any allowance in respect of any use to which the land compulsorily hired might otherwise be put by the owner during the term of hiring, being a use in respect of which the owner is entitled to resume possession of the land under this Act.

(5) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land compulsorily hired shall, as far as possible, be provided for by taking such compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term for which it is held by the tenant.

(6) Any person interested in any valuation shall give the valuer all such assistance, information, and explanations as he may require, and shall produce to the valuer, or give him access to, all such books, accounts, vouchers, and other documents relating to the land to be compulsorily hired as he may reasonably require for the purpose of valuation, and such expenses as the valuer certifies to have been properly incurred by any person in furnishing such assistance, information, and explanations, or otherwise, in relation to the valuation, shall be paid by the council.

(7) On the determination of any tenancy created by compulsory hiring any questions as to the amount due by the council for depreciation shall in default of agreement be determined by arbitration.

## SECOND SCHEDULE.

IMPROVEMENTS REFERRED TO IN SECTION FORTY-SEVEN.

## PART I.

[Section 47.]

(1) Planting of standard or other fruit trees permanently set out;  
 (2) Planting of fruit bushes permanently set out;  
 (3) Planting of strawberry plants;  
 (4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.

## PART II.

[Section 47.]

(1) Erection, alteration, or enlargement of buildings;  
 (2) Formation of silos;  
 (3) Laying down of permanent pasture;  
 (4) Making and planting of osier beds;  
 (5) Making of water meadows or works of irrigation;  
 (6) Making of gardens;  
 (7) Making or improving of roads or bridges;  
 (8) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes;  
 (9) Making or removal of permanent fences;  
 (10) Planting of hops;  
 (11) Planting of orchards or fruit bushes;  
 (12) Protecting young fruit trees;  
 (13) Reclaiming of waste land;  
 (14) Warping or weiring of land;  
 (15) Embankments and sluices against floods;  
 (16) The erection of wirework in hop gardens;  
 (17) Drainage.

## THIRD SCHEDULE.

## ENACTMENTS REPEALED.

[Section 62.]

Session and Chapter.	Short Title.	Extent of Repeal.
50 & 51 Vict. c. 48.	The Allotments Act, 1887.	The whole Act, except as respects sub-sections (4) to (8) of section three so far as they are applied by any other enactment.
53 & 54 Vict. c. 65.	The Allotments Act, 1890.	The whole Act, except so far as it relates to Scotland.
55 & 56 Vict. c. 31.	The Small Holdings Act, 1892.	In section six, sub-sections (3) and (4).
56 & 57 Vict. c. 73.	The Local Government Act, 1894.	Section nineteen.
60 & 61 Vict. c. 65.	The Land Transfer Act, 1897.	The whole Act.
7 Edw. 7, c. 54.	The Small Holdings and Allotments Act, 1907.	

## CHAPTER 37.

[Coroners (Ireland) Act, 1908.]

An Act to provide for the Appointment of Deputy Coroners in Counties and Boroughs in Ireland.

[1st August 1908.]

## CHAPTER 38.

[Irish Universities Act, 1908.]

An Act to make further provision with respect to University Education in Ireland.

[1st August 1908.]

## CHAPTER 39.

[Endowed Schools (Masters) Act, 1908.]

An Act to make provision with respect to the tenure of office of Masters of Endowed Schools.

[1st August 1908.]

Be it enacted, &amp;c. :

1. *Tenure of office of masters of endowed schools.*—(1) Notwithstanding anything contained in any scheme made with reference to an endowed school, any master in the school, by whomsoever appointed, and whether appointed before or after the passing of this Act, shall be deemed to be in the employment of the governing body for the time being of the school.

(2) It is hereby declared that, notwithstanding anything in section twenty-two of the Endowed Schools Act, 1869 [32 & 33 Vict. c. 56], any provision in any scheme, whether made before or after the passing of this Act, providing for notice being given to a master before he is dismissed from office, shall have full effect.

(3) Subject to any special provisions as to notice contained in any scheme relating to an endowed school, and subject to any special agreement as to notice, the dismissal of a master in an endowed school, whether appointed before or after the passing of this Act, shall not take effect except at the end of a school term, and except after at least two months' notice of dismissal has been given to him by or on behalf of the governing body of the school.

(4) Nothing in this Act or in any scheme, whether made before or after the passing of this Act, shall prevent the dismissal of a master without notice for misconduct or other good and urgent cause.

2. *Saving for effect of judgments of court.* Nothing in this Act shall prejudice the operation or enforcement of any judgment or order of any court of competent jurisdiction pronounced or made before the first day of August nineteen hundred and eight, as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not passed.

3. *Definitions.*—In this Act—

The expression "endowed school" means an endowed school within the meaning of section six of the Endowed Schools Act, 1869, and includes any school which would be treated as an endowed school within the meaning of that section if section eight of that Act had not been enacted: Provided that nothing in this Act shall apply to a public elementary school or to any school which is one of the schools mentioned in section three of the Public Schools Act, 1868 [31 & 32 Vict. c. 118].

The expression "scheme" means a scheme made under the Endowed Schools Acts, 1869 to 1889, or under the Charitable Trusts Acts, 1853 to 1894, with reference to an endowed school:

The expression "master" means any teacher or officer in the school, and includes the principal teacher.

4. *Short title.*—This Act may be cited as the Endowed Schools (Masters) Act, 1908, and may be cited with the Endowed Schools Acts, 1869 to 1889.

## CHAPTER 40.

[Old Age Pensions Act, 1908.]

An Act to provide for Old Age Pensions.

[1st August 1908.]

Be it enacted, &amp;c. :

1. *Right to receive old age pension.*—(1) Every person in whose case the conditions laid down by this Act for the receipt of an old age pension (in this Act referred to as statutory conditions) are fulfilled, shall be entitled to receive such a pension under this Act so long as those conditions continue to be fulfilled, and so long as he is not disqualified under this Act for the receipt of the pension.

(2) An old age pension under this Act shall be

at the rate set forth in the schedule to this Act.

(3) The sums required for the payment of old age pensions under this Act shall be paid out of moneys provided by Parliament.

(4) The receipt of an old age pension under this Act shall not deprive the pensioner of any franchise, right, or privilege, or subject him to any disability.

2. *Statutory conditions for receipt of old age pension.*—The statutory conditions for the receipt of an old age pension by any person are—

(1) The person must have attained the age of seventy:

(2) The person must satisfy the pension authorities that for at least twenty years up to the date of the receipt of any sum on account of a pension he has been a British subject, and has had his residence, as defined by regulations under this Act, in the United Kingdom:

(3) The person must satisfy the pension authorities that his yearly means as calculated under this Act do not exceed thirty-one pounds ten shillings.

3. *Disqualification for old age pension.*—(1) A person shall be disqualified for receiving or continuing to receive an old age pension under this Act, notwithstanding the fulfilment of the statutory conditions—

(a) While he is in receipt of any poor relief (other than relief excepted under this provision), and, until the thirty-first day of December nineteen hundred and ten unless Parliament otherwise determines, if he has at any time since the first day of January nineteen hundred and eight received, or hereafter receives, any such relief: Provided that for the purposes of this provision—

(i) any medical or surgical assistance (including food or comforts) supplied by or on the recommendation of a medical officer; or

(ii) any relief given to any person by means of the maintenance of any dependant of that person in any lunatic asylum, infirmary, or hospital, or the payment of any expenses of the burial of a dependant; or

(iii) any relief (other than medical or surgical assistance, or relief hereinbefore specifically exempted) which by law is expressly declared not to be a disqualification for registration as a Parliamentary elector, or a reason for depriving any person of any franchise, right, or privilege;

shall not be considered as poor relief:

(b) If, before he becomes entitled to a pension, he has habitually failed to work according to his ability, opportunity, and need, for the maintenance or benefit of himself and those legally dependent upon him:

Provided that a person shall not be disqualified under this paragraph if he has continuously for ten years up to attaining the age of sixty, by means of payments to friendly, provident, or other societies, or trade unions, or other approved steps, made such provision against old age, sickness, infirmity, or want or loss of employment as may be recognised as proper provision for the purpose by regulations under this Act, and any such provision, when made by the husband in the case of a married couple living together, shall as respects any right of the wife to a pension, be treated as provision made by the wife as well as by the husband:

(c) While he is detained in any asylum within the meaning of the Lunacy Act, 1890 [53 & 54 Vict. c. 5], or while he is being maintained in any place as a pauper or criminal lunatic:

(d) During the continuance of any period of disqualification arising or imposed in pursuance of this section in consequence of conviction for an offence.

(2) Where a person has been before the passing of this Act, or is after the passing of this Act, convicted of any offence, and ordered to be imprisoned without the option of a fine or to suffer any greater punishment, he shall be disqualified for receiving or continuing to receive an old age pension under this Act while he is detained in prison in consequence of the order, and for a further period of ten years after the date on which he is released from prison.

(3) Where a person of sixty years of age or upwards having been convicted before any court is liable to have a detention order made against him under the Inebriates Act, 1898 [61 & 62 Vict. c. 60], and is not necessarily, by virtue of the provisions of this Act, disqualified for receiving or continuing to receive an old age pension under this Act, the court may, if they think fit, order that the person convicted be so disqualified for such period, not exceeding ten years, as the court direct.

4. *Calculation of means.*—(1) In calculating the means of a person for the purpose of this Act account shall be taken of—

(a) the income which that person may reasonably expect to receive during the succeeding year in cash, excluding any sums receivable on account of an old age pension under this Act, that income, in the absence of other means for ascertaining the income, being taken to be the income actually received during the preceding year;

(b) the yearly value of any advantage accruing to that person from the use or enjoyment of any property belonging to him which is personally used or enjoyed by him;

(c) the yearly income which might be expected to be derived from any property belonging to that person which, though capable of investment or profitable use, is not so invested or profitably used by him; and

(d) the yearly value of any benefit or privilege enjoyed by that person.

(2) In calculating the means of a person being one of a married couple living together in the same house, the means shall not in any case be taken to be a less amount than half the total means of the couple.

(3) If it appears that any person has directly or indirectly deprived himself of any income or property in order to qualify himself for the receipt of an old age pension, or for the receipt of an old age pension at a higher rate than that to which he would otherwise be entitled under this Act, that income or the yearly value of that property shall, for the purposes of this section, be taken to be part of the means of that person.

5. *Mode of paying pensions.*—(1) An old age pension under this Act, subject to any directions of the Treasury in special cases, shall be paid weekly in advance in such manner and subject to such conditions as to identification or otherwise as the Treasury direct.

(2) A pension shall commence to accrue on the first Friday after the claim for the pension has been allowed, or, in the case of a claim provisionally allowed, on the first Friday after the day on which the claimant becomes entitled to receive the pension.

6. *Old age pension to be inalienable.* Every assignment of or charge on and every agreement to assign or charge an old age pension under this Act shall be void, and, on the bankruptcy of a person entitled to an old age pension, the pension shall not pass to any trustee or other person acting on behalf of the creditors.

7. *Determination of claims and questions.*—(1) All claims for old age pensions under this Act and

all questions whether the statutory conditions are fulfilled in the case of any person claiming such a pension, or whether those conditions continue to be fulfilled in the case of a person in receipt of such pension, or whether a person is disqualified for receiving or continuing to receive a pension, shall be considered and determined as follows:—

(a) Any such claim or question shall stand referred to the local pension committee, and the committee shall (except in the case of a question which has been originated by the pension officer and on which the committee have already received his report), before considering the claim or question, refer it for report and inquiry to the pension officer:

(b) The pension officer shall inquire into and report upon any claim or question so referred to him, and the local pension committee shall, on the receipt of the report of the pension officer and after obtaining from him or from any other source if necessary any further information as to the claim or question, consider the case and give their decision upon the claim or question:

(c) The pension officer, and any person aggrieved, may appeal to the central pension authority against a decision of the local pension committee allowing or refusing a claim for pension or determining any question referred to them within the time and in the manner prescribed by regulations under this Act, and any claim or question in respect of which an appeal is so brought shall stand referred to the central pension authority, and shall be considered and determined by them:

(d) If any person is aggrieved by the refusal or neglect of a local pension committee to consider a claim for a pension, or to determine any question referred to them, that person may apply in the prescribed manner to the central pension authority, and that authority may, if they consider that the local pension committee have refused or neglected to consider and determine the claim or question within a reasonable time, themselves consider and determine the claim or question in the same manner as on an appeal from the decision of the local pension committee.

(2) The decision of the local pension committee on any claim or question which is not referred to the central pension authority, and the decision of the central pension authority on any claim or question which is so referred to them, shall be final and conclusive.

8. *Local pension committee, central pension authority, and pension officers.*—(1) The local pension committee shall be a committee appointed for every borough and urban district, having a population according to the last published census for the time being of twenty thousand or over, and for every county (excluding the area of any such borough or district), by the council of the borough, district, or county.

The persons appointed to be members of a local pension committee need not be members of the council by which they are appointed.

(2) A local pension committee may appoint such and so many sub-committees, consisting either wholly or partly of the members of the committee as the committee think fit, and a local pension committee may delegate, either absolutely or under such conditions as they think fit, to any such sub-committee any powers and duties of the local pension committee under this Act.

(3) The central pension authority shall be the Local Government Board, and the Board may act through such committee, persons, or person appointed by them as they think fit.

(4) Pension officers shall be appointed by the Treasury, and the Treasury may appoint such

number of those officers as they think fit to act for such areas as they direct.

(5) Any reference in this Act to pension authorities shall be construed as a reference to the pension officer, the local pension committee, and the central pension authority, or to any one of them, as the case requires.

9. *Penalty for false statements, &c., and repayment where pensioner is found not to have been entitled to pension.*—(1) If for the purpose of obtaining or continuing an old age pension under this Act, either for himself or for any other person, or for the purpose of obtaining or continuing an old age pension under this Act for himself or for any other person at a higher rate than that appropriate to the case, any person knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months, with hard labour.

(2) If it is found at any time that a person has been in receipt of an old age pension under this Act while the statutory conditions were not fulfilled in his case or while he was disqualified for receiving the pension, he, or, in the case of his death, his personal representative, shall be liable to repay to the Treasury any sum paid to him in respect of the pension while the statutory conditions were not fulfilled or while he was disqualified for receiving the pension, and the amount of those sums may be recovered as a debt due to the Crown.

10. *Regulations and expenses.*—(1) The Treasury in conjunction with the Local Government Board and with the Postmaster-General (so far as relates to the Post Office) may make regulations for carrying this Act into effect, and in particular—

(a) for prescribing the evidence to be required as to the fulfilment of statutory conditions and for defining the meaning of residence for the purposes of this Act; and

(b) for prescribing the manner in which claims to pensions may be made, and the procedure to be followed on the consideration and determination of claims and questions to be considered and determined by pension officers and local pension committees or by the central pension authority, and the mode in which any question may be raised as to the continuance, in the case of a pensioner, of the fulfilment of the statutory conditions, and as to the disqualification of a pensioner; and

(c) as to the number, quorum, term of office, and proceedings generally of the local pension committee and the use by the committee, with or without payment, of any offices of a local authority, and the provision to be made for the immediate payment of any expenses of the committee which are ultimately to be paid by the Treasury.

(2) The regulations shall provide for enabling claimants for pensions to make their claims and obtain information as respects old age pensions under this Act through the Post Office, and for provisionally allowing claims to pensions before the date on which the claimant will become actually entitled to the pension, and for notice being given by registrars of births and deaths to the pension officers or local pension committees of every death of a person over seventy registered by them, in such manner and subject to such conditions as may be laid down by the regulations, and for making the procedure for considering and determining on any claim for a pension or question with respect to an old age pension under this Act as simple as possible.

(3) Every regulation under this Act shall be laid before each House of Parliament forthwith, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent twenty-one days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be

annulled, His Majesty in Council may annul the regulation, and it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

(4) Any expenses incurred by the Treasury in carrying this Act into effect, and the expenses of the Local Government Board and the local pension committees under this Act up to an amount approved by the Treasury, shall be defrayed out of moneys provided by Parliament.

**11. Application to Scotland, Ireland, and the Scilly Isles.]**—(1) In the application of this Act to Scotland, the expression "Local Government Board" means the Local Government Board for Ireland; ten thousand shall be substituted for twenty thousand as the population limit for boroughs and urban districts; and the expression "asylum within the meaning of the Lunacy Act, 1890 [61 & 62 Vict. c. 37]," means a lunatic asylum within the meaning of the Local Government (Ireland) Act, 1898.

(2) In the application of this Act to Ireland, the expression "Local Government Board" means the Local Government Board for Ireland; ten thousand shall be substituted for twenty thousand as the population limit for boroughs and urban districts; and the expression "asylum within the meaning of the Lunacy Act, 1890 [61 & 62 Vict. c. 37]," means a lunatic asylum within the meaning of the Local Government (Ireland) Act, 1898.

(3) In the application of this Act to the Isles of Scilly, those isles shall be deemed to be a county and the council of those isles the council of a county.

**12. Commencement and short title.]**—(1) A person shall not be entitled to the receipt of an old age pension under this Act until the first day of January, nineteen hundred and nine, and no such pension shall begin to accrue until that day. (2) This Act may be cited as the Old Age Pensions Act, 1908.

SCHEDULE.  
[Section 2.]

Means of Pensioner.	Rate of Pension per Week.
Where the yearly means of the pensioner as calculated under this Act—	
Do not exceed £21	5 0
Exceed £21, but do not exceed £23 12s. 6d.	4 0
Exceed £23 12s. 6d., but do not exceed £26 5s.	3 0
Exceed £26 5s., but do not exceed £28 17s. 6d.	2 0
Exceed £28 17s. 6d., but do not exceed £31 10s.	1 0
Exceed £31 10s. - - - -	No pension

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DIGEST OF CASES REPORTED IN  
THE SOLICITORS' JOURNAL & WEEKLY REPORTER  
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ADMINISTRATOR :—

*Administrator ad colligenda bona—Landlord and tenant—Death of lessor—Action by landlord to recover possession and for rent and mesne profits—Physical entry into possession by administrator—Personal liability for rent.*—An administrator *ad colligenda bona* who takes possession of demised premises is liable for rent and mesne profits, though by proper pleading he may limit such liability for rent to the actual value which the premises would have yielded to the landlord.—*WHITEHEAD v. PALMER, K.B.D.*, 45; 1908, 1 K. B. 151.

See also Probate.

ADULTERATION :—

1. *Margarine—Substance called "Nut-cream Butter" containing no animal fat—Infringement of section 8 of the Margarine Act, 1887 (50 & 51 Vict. c. 29).*—The respondent was summoned for selling a substance called "nut-cream butter" without having it labelled as margarine. The analysis showed that the substance, which had all the appearance of butter, was composed wholly of nuts, and contained no animal fat at all.

Held, that this substance was "margarine" within the meaning of section 3 of the Margarine Act, 1887, although it contained no animal fat, and was a substance unknown when the Act was passed, and consequently the respondent was not entitled to sell it as he did under another name than "margarine," and free from the conditions imposed by that Act as amended by the Sale of Food and Drugs Act, 1890.—*WILKINSON v. ALTON, K.B.D.*, 457.

2. *Milk—Abstraction of fat—Warranty by farmers to wholesale supply dairy company—No warranty by company to retail purchaser except that the milk was sold as supplied to them by farmers—Liability of retailer—Food and Drugs Act, 1875, ss. 9, 24.*—The respondent, a milkman, contracted with a wholesale firm for "a supply of genuine milk as received from farmers." There was also this clause in the agreement: "It is fully understood that this agreement is for milk as received from the farmers, that no warranty is hereby implied, and that the buyer must satisfy himself of its quality before it is accepted by him." On an information laid under section 9 of the Act of 1875 against the respondent by the appellant for selling to him milk from which 23 per cent. of fat had been abstracted.

Held, reversing the decision of the judges, that the respondent could not rely on section 25 of the Act of 1875, because the warranty given by the farmers to the wholesale company was not a warranty to the respondent.—*HARGRAVES v. SPACKMAN, K.B.D.*, 132.

AGENT.—See Factor, Insurance.

APPEAL :—

1. *"Criminal cause or matter"—Distress for rent—Excessive charges—Proceedings before justices to recover treble the excess—Penalty—Distress (Costs) Act, 1817 (57 Geo. 3, c. 93), ss. 1, 2—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 47.*—The decision of the King's Bench Division upon a case stated by justices in proceedings under 57 Geo. 3, c. 93, s. 2, to recover treble the amount of the excess alleged to have been illegally charged by a bailiff for making a distress for rent in arrear is a decision in a "criminal cause or matter" within section 47 of the Judicature Act, 1873, as the proceedings before the justices may end in imprisonment; and therefore no appeal lies in such a case to the Court of Appeal.

Appeal from the Divisional Court (51 SOLICITORS' JOURNAL, 249; 1907, 1 K. B. 690) dismissed upon the above ground.—*ROBSON v. BIGGAR, C.A.*, 76.

2. *Practice and Procedure—Enforcing award—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 1, 12—Judicature Act, 1894 (57 & 58*

*Vict. c. 16), s. 1, sub-section 4.*—An appeal from an order of a judge of chambers upon an application to enforce an award under section 12 of the Arbitration Act, 1889, lies direct to the Court of Appeal, the matter being one of practice and procedure within the meaning of section 1, sub-section 4, of the Judicature Act, 1894.—*COLMAN AND WATSON, RE, C.A.*, 28; 1908, 1 K. B. 47.

3. *"Practice and Procedure"—Undertaking by solicitor not in action—Originating summons to enforce—Judicature Act, 1894 (57 & 58 Vict. c. 16), s. 1, sub-section 4.*—An application by originating summons to enforce an undertaking to pay money given by a solicitor not in an action is not a matter of "practice and procedure" within section 1, sub-section 4, of the Judicature Act, 1894, and an appeal from the judge in chambers does not lie direct to the Court of Appeal.—*MARCHANT, RE, C.A.*, 316.

4. *Trial of issue by Master under ord. 45, r. 4—Appeal from decision of Master, to what court?*—The appeal from the decision of a Master of the High Court in an issue directed to be tried by him under ord. 45, r. 4 of the Rules of the Supreme Court lies to the Divisional Court under ord. 40, r. 6 of those rules.—*BLAIR v. CLARK, K.B.D.*, 498.

See also Costs, Criminal Law, Police.

APPOINTMENT.—See Executors, Power, Revenue, Settlement.

ARBITRATION.—See Appeal, County Court.

ATTACHMENT :—

*Order to pay on admissions—Default by a trustee—Order including sums not in the possession or under the control of the trustee—Assignment of book debts to secure costs—Debt's though assigned already discharged at date of assignment—E-toppe—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 4, sub-section 3.*—J. M. charged certain specified book debts in favour of H., and verbally agreed that he would hand over the sums received from the debtors to H. Among the debts were several which had already been paid at the date of the charge. H. brought an action against J. M. to enforce the security. J. M., by his defence, denied the verbal agreement, but admitted the receipt of the moneys. He did not appear at the trial. The court made an order on J. M. for payment personally. J. M. disregarded the order, and H. then moved to attach him.

Held, that J. M. was a trustee since the date of charge, but as the order for payment comprised certain sums which were not in his possession or control he was not a trustee of the sum mentioned in the order for payment, and the motion must be refused.

*Preston v. Etherington* (37 Ch. D. 104) explained. *HARPER v. MCINTYRE, Eve, J.*, 533.

AUCTIONEER.—See Misrepresentation.

BANK :—

*Bank of England—India stock—Transfer—Forged transfer—Identification of transferor by broker—Request to bank to transfer—Implied contract to indemnify bank.*—A stockbroker, who was on the Bank of England's list of brokers whose identification of transferors of stock registered in their books the bank would accept, sent to the bank a ticket or form giving particulars of certain India 3½ per cent. stock to be transferred, and the names and addresses of the transferor and transferee, so as to enable the bank to prepare the transfer, and later on the same day he attended at the bank with the transferor and identified her to the bank officials as the owner of the stock. The bank accordingly made the transfer. The transfer was in fact a forgery, the transferor not being the owner of the stock, but the stockbroker *bona fide* believed that she was, being himself misled. The stock was subsequently sold on the

Stock Exchange to a *bona fide* holder for value and transferred into his name. Upon the forgery being discovered the bank purchased a similar amount of stock in the market so as to replace the stock in the true owner's name, and brought an action against the stockbroker to recover the amount so paid.

Held (by Farwell and Kennedy, L.J.J., Vaughan Williams, L.J., dissenting), that the stockbroker by his acts requested the bank to transfer the stock, and was therefore liable to indemnify them for any loss caused thereby.

Held, also, that, as the bank were estopped from denying the purchaser's title, they were entitled to buy other stock on the market, and recover the amount paid for it from the stockbroker.

Judgment of A. T. Lawrence, J. (51 SOLICITORS' JOURNAL, 344; 1907, 1 K. B. 889) affirmed.—BANK OF ENGLAND v. CUTLER, C.A., 442; 1908, 2 K. B. 208.

#### BANKER :—

*Cheque—Countermand by telegram.*—A telegram countermanding a cheque may reasonably and in the ordinary course of business be acted upon by a bank, at least to the extent of postponing the honouring of the cheque until further inquiry can be made, but the bank is not bound as a matter of law to accept an unauthenticated telegram as an authority for refusing to pay a cheque.—CURTICE v. LONDON CITY AND MIDLAND BANK, C.A., 130; 1908, 1 K. B. 293.

#### BANKRUPTCY :—

1. *Action by trustee in bankruptcy for trespass and conversion of bankrupt's goods—Agreement giving power to seize—Set-off of debt due from bankrupt to defendants—Mutual dealings—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31), s. 4—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 38.*—The defendants had seized coal on land contiguous to their railway sidings, demised by them to the bankrupt, under the terms of an agreement giving them a lien on such coal for carriage dues. The trustee in the bankruptcy brought an action for trespass and wrongful conversion.

Held (1) that the bankrupt being in possession of the land on which the coal was, the agreement was a document which conferred rights of disposition of or charges upon chattels on a person who had no common law lien and no possession in respect of such chattels, and was, therefore, a bill of sale, and consequently void for want of registration; (2) that the defendants could not set-off against the damages recovered by the trustee the amount owing to them by the bankrupt for carriage.—LORD'S TRUSTEE v. GREAT EASTERN RAILWAY CO., C.A., 394; 1908, 2 K. B. 54.

2. *Bankruptcy notice—Error in amount demanded—Accordance with the terms of the judgment—Amendment of bankruptcy notice—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-section (1) (g); s. 143.*—A bankruptcy notice which demands payment of any sum which is not due under the judgment upon which it is based is bad, and cannot be amended.

*Re Bates, Ex parte Lindsey* (35 W. R. 668; 4 Mort. 192) overruled.—A DEBTOR, RE, EX PARTE THE DEBTOR, C.A., 641.

3. *Bankruptcy notice founded on county court judgment—Accordance with the terms of the judgment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-section (1) (g); County Court Act, 1888, s. 105—Bankruptcy Rules, 1886-1890, r. 136, Form No. 6.*—Where a creditor has obtained judgment in a county court which requires the debtor to pay the amount recovered to the registrar of the court, any bankruptcy notice based upon such judgment must require the debtor to pay the judgment debt to the registrar of the county court, and not to the judgment creditor; otherwise the bankruptcy notice will be held bad, as not in accordance with the terms of the judgment.—A DEBTOR, RE, EX PARTE PETITIONING CREDITOR, C.A., 641.

4. *Bankruptcy notice—Notice not in accordance with terms of judgment—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-section (1) (g).*—Judgment having been obtained by William Payne and William Skipp, trading as the Hertingfordbury Brick Co., a bankruptcy notice was issued thereon requiring the debtor to pay the amount of the judgment to William Payne, of Oak Villa, Enfield Highway, Middlesex, and William Skipp, of Hope House, Ware, Herts.

Held (by Cozens-Hardy, M.R., and Kennedy, L.J., Buckley, L.J., dissenting), that the bankruptcy notice was not in accordance with the terms of the judgment, was calculated to mislead the debtor, and must be set aside.—A DEBTOR, RE, EX PARTE PAYE, C.A., 567.

5. *Bill of sale—Defeasance—Registration—Bills of Sale Act, 1878, s. 10, sub-section 3.*—A debtor gave a bill of sale over his household chattels to secure £1,000, and on the same day executed a mortgage of his leaseholds to secure the same loan. The mortgage contained provisions different from the terms of the bill of sale.

He'd, that the mortgage was not a defeasance or condition of the

bill of sale, but an independent contract not requiring registration, and that the bill of sale was good.—LEBER, RE, EX PARTE THE TRUSTEE, Bkcy., 483.

6. *Committal of special manager for failing to file accounts—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, ss. 12, 102, sub-section 5—Bankruptcy Rules, 1886, 1890, r. 344.*—The court has jurisdiction, upon the application of the Board of Trade, to order a special manager to comply with an order to file accounts, and, if it think fit, to order his committal.—JONES, RE, Bkcy., 116; 1908, 1 K. B. 204.

7. *Compromise of claims by and against the trustee—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52, s. 57), sub-sections 7, 8.*—The court sanctioned a compromise of claims by and against a trustee in bankruptcy, whereby the claim against the trustee was reduced and the claim by the trustee was satisfied by the issue to the trustee of shares in a limited company.—MACFADYEN, RE, EX PARTE GLASS, Bkcy., 134.

8. *Costs—Taxation—Small bankruptcies—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 121—Bankruptcy Rules, 1886-1890, r. 112.*—During the course of a small bankruptcy the Official Receiver, as trustee, employed solicitors to obtain probate of the will of the bankrupt's wife. The registrar of the county court taxed off two-fifths of the profit costs of the solicitors, holding that the steps taken to obtain probate were proceedings under the Bankruptcy Act within the terms of rule 112 of the Bankruptcy Rules, 1886-1890.

Held, that the words "proceedings under the Act" must be strictly construed, and did not apply to proceedings taken outside the Bankruptcy Court. The court, however, came to this decision with great reluctance and only because they felt bound to follow *re Parfitt* (37 W. R. 751, 23 Q. B. D. 40).—WEIGHILL, RE, EX PARTE FABER Bkcy., 728.

9. *Creditor's right to issue bankruptcy notice—Bill of exchange taken as security for debt—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 4, sub-section 1 (g).*—A creditor who has taken a bill from his debtor in security for his debt cannot issue a bankruptcy notice so long as that bill is in the hands of third parties, even though it be over due.—A DEBTOR, RE, C.A., 174; 1908, 1 K. B. 344.

10. *Discharge—Suspension subject to conditions—Bankruptcy Act, 1890 (53 & 54 Vict. c. 71), s. 8, sub-sections 2, 3.*—The court has no power to order the suspension of a bankrupt's discharge until he has paid not less than ten shillings in the pound, and for a period of years after such payment.—WALMSLEY, RE, EX PARTE WALMSLEY, Bkcy., 192.

11. *English bankruptcy and Indian insolvency—Agreement to pool the English and Indian assets—Sanction of Court.*—The court sanctioned a scheme for the pooling of the assets in the English bankruptcy and Indian insolvency of firms carrying on business in London and Madras, such arrangement being hitherto without precedent.—MACFADYEN & CO., RE, EX PARTE VIZIANAGARAM CO., Bkcy., 226; 1908, 1 K. B. 675.

12. *Fraudulent preference—Shipment of goods—Bankruptcy of purchaser—Stoppage in transitu—R-transfer of bills of lading to vendor—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 48—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), ss. 44, 45, 46.—*The bankrupt had purchased goods from the respondents, who had handed over to him the bill of lading for the goods against his acceptances at seventy-five days. Before the goods were delivered, the bankrupt told the respondents that he was in difficulties, and they required that their goods should be given back. The bankrupt agreed to this, and gave them a delivery order on the lightermen to whom he had endorsed the bill of lading.

Held, that the respondents had properly required their goods to be handed back as soon as they saw that the bills would not be met, and that the bankrupt had properly yielded to their pressure, and had not acted with a view to prefer them.

Bigham, J., also expressed the opinion that if the transaction had been a fraudulent preference the respondents would still have had the right to stop the goods in transitu; agreeing with the judgment of Collins, J., *In re O'Sullivan, Ex parte Ferd. Baller* (66 L. T. 619).—JOHNSON, RE, EX PARTE THE TRUSTEE, Bkcy., 622.

13. *Landlord and tenant—Distress for rent—Commencement of Bankruptcy—Computation of time—Bankruptcy Act, 1883, ss. 42, 43.*—On the 23rd of October, 1907, a landlord put in a distress for rent, and on the same date the tenant was adjudicated bankrupt upon his own petition. The question having arisen as to whether the distress was put in before or after the commencement of the bankruptcy, it was contended that it was immaterial whether the distress was put in before the bankrupt filed his petition, because the adjudication, being a judicial act, related back to the earliest moment of the day.

Held, that the bankruptcy commenced at the time when the act of bankruptcy was committed on which the receiving order was

made, therefore if the distress were put in before the bankrupt filed his petition it would be before the commencement of the bankruptcy.—BUMPUS, RE, *Bkcy.*, 395.

14. *Lease—Disclaimer—Vesting order—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 55, sub-section 6.*—The bankrupt held a lease of a plot of land for 999 years at £150 a year ground-rent, which had been disclaimed by the trustee. The bankrupt had divided the plot into five parts, four of which he had mortgaged by sub-demise.

Held, that the mortgagees were entitled to a vesting order of the whole of the plot by way of compensation for their liability to pay the whole of the ground-rent.—HOLMES, RE, *EX PARTE CLOSE, Bkcy.*, 728.

15. *Money-lender—Petitioning creditor's debt—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 2, sub-section 1 (n), (c).*—A registered money-lender who carries on a money-lending business otherwise than in his registered name or at his registered address, or enters into any agreement, or takes any security for money in the course of his business as a money-lender otherwise than in his registered name, cannot recover, or present a bankruptcy petition in respect of, money so lent.—A DEBTOR, RE, *EX PARTE CARDEN, C.A.*, 209.

16. *Mutual credits—Set-off—Voluntary settlement of money by bankrupt on his wife—Settlement declared void—Debt due from husband to wife—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 38, 47.*—Within two years before his bankruptcy a bankrupt by a voluntary settlement transferred £250 to his wife. After the bankruptcy, upon the application of the trustee in the bankruptcy, the settlement was declared void as against him. The trustee thereupon sued to recover the £250 from the wife, and the latter claimed to set off against that sum the balance of a debt due to her from her husband and secured by a mortgage of certain property, the security being insufficient to pay the mortgage debt in full.

Held (by Vaughan Williams and Buckley, L.J.J., Fletcher Moulton, L.J., dissenting), that the wife was not entitled to a set-off.—*LISTER v. HOOSON, C.A.*, 93; 1908, 1 K. B. 174.

17. *Notice of rejection of proof—Service at last known place of address—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 142.*—Where a trustee knows that a creditor whose proof he desires to reject has gone abroad, but does not know of his address abroad, he may send notice of rejection of proof by post to the last known address of the creditor in England.—FOLICK, RE, *EX PARTE THE TRUSTEE, Bkcy.*, 13.

18. *Post-nuptial settlement—Purchaser for value—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.*—Within two years of his bankruptcy a husband executed a settlement in favour of his wife in consideration of her refraining from taking proceedings against him for divorce.

Held (by Cozens-Hardy, M.R., and Fletcher Moulton, L.J., Buckley, L.J., dissenting) that the wife was a purchaser for valuable consideration, and that the settlement ought not to be avoided under section 47 of the Bankruptcy Act, 1883.—POPE, RE, *EX PARTE THE TRUSTEE, C.A.*, 458; 1908, 2 K. B. 169.

19. *Proof—Gaming debt—New consideration.*—In October, 1899, the bankrupt, an outside broker, lost a bet to a member of the Stock Exchange, and gave a bill for the amount due in March, 1900. The bankrupt was unable to meet the bill at maturity, and feared that if his position became known some large accounts which he had open on the Stock Exchange would be closed. He confided his fears to his creditor, and asked for his forbearance, in consideration for which he accepted a new bill, at two months, dated the 17th of March, 1900. He failed to meet the new bill, and the creditor recovered judgment upon it, but took no further steps until the debtor became bankrupt, when he presented a proof against the estate.

Held, that the debt was a gaming debt and not provable, for there was no evidence of any fresh consideration to take the second bill out of the operation of the Gaming Acts. To constitute such consideration there must be evidence of threats on the part of the creditor to do some lawful act. The mere fact that the debtor fears the consequences of not paying the debt is insufficient.—COMAR, RE, *EX PARTE RONALD, C.A.*, 642.

20. *Proof—Partnership—Proof against joint and separate estates—Bankruptcy Act, 1883 (Schedule II., r. 18).*—The bankrupt was a director of a company, and also a partner in a firm. He, or his firm, who were general managers and agents to the company, pledged documents of the company for advances of money used for the purposes of the firm.

Held, that the bankrupt had been guilty of a breach of trust in his capacity as a director of the company so as to entitle the company to prove against his separate estate, as well as against the joint estate of his firm.—MACFADYEN, RE, *EX PARTE VIZIANAGARAM CO., C.A.*, 727.

21. *Secured creditor—Composition with creditors—Annulment of bankruptcy—Proof valuing security—Right of debtor to redeem after annulment of bankruptcy—Proof of several debts and securities and of unsecured balance in a lump sum—Creditor's right to consolidate—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), ss. 23 and 163, Schedule II., rr. 9 to 17—Bankruptcy Act, 1893 (53 & 54 Vict. c. 71).*—In cases where a bankruptcy is annulled by the order of the court after approval of a composition scheme under section 23 of the Bankruptcy Act of 1883, the bankrupt's property vests in him, and he is entitled to redeem any securities which secured creditors may have elected to retain upon proving for the balance of their claims in the bankruptcy. The price of redemption is the value at which the creditor assessed the security in his proof with interest, credit being given for profits, if any, attributable to the security, in either case from the date of proof. Where creditors in respect of several debts had several securities for such debts, but proved in the bankruptcy for a single balance after deducting the aggregate value of the securities retained by them upon their own assessment, and the trustee merely required the separate values at which the securities were assessed without statement of the several debts or balances of debt in respect of such securities, and admitted proof of the balance as a lump sum and paid a dividend and a composition on such proof.

Held, that after the bankruptcy was annulled the plaintiff was not entitled to pick and choose which of the securities he would redeem, and that the creditors were entitled to consolidate the whole of the securities against the whole sum at which these had been assessed.

Whether the defendants were secured creditors, as holders of vendor's lien, in respect of contracts to sell shares in steamships which had never been transferred to the debtor, *quære*.—PEARCE v. BULLARD, *Joyce, J.*, 301; 1908, 1 Ch. 780.

22. *Settlement—Post-nuptial settlement—Voluntary settlement—Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), s. 47.*—The appellant had made a post-nuptial settlement abroad on his wife in November, 1901, and was adjudicated a bankrupt in England in November, 1903. The trustee claimed that the settlement was void under section 47 of the Bankruptcy Act, 1883. It was admitted that the appellant was solvent in 1901.

Held that, as under the terms of the settlement by the declaration of trust the settlor had ceased to have any beneficial interest in the property settled, the settlement was not void as against the trustee's claim, although there had been no actual transfer of the legal title.—SHRAGER v. MARCH, *P.C.*, 580.

#### BETTING.—See Gaming.

#### BILL OF EXCHANGE:—

1. *Cheque—Forged indorsement—Cheque for a greater amount than actually found by drawer personally—Measure of damages.*—Where a bank is sued for the conversion of a cheque, the property of the plaintiff, or alternatively for a like amount of money had and received for the plaintiff's use, it is no defence to show that in order to meet the cheque part of the sum had been found by a third party and paid into the plaintiff's account.—IRVINE v. NORTH AND SOUTH WALES BANK, *H.L.*, 354; 1908, *A.C.*, 137.

2. *Cheque—Forged indorsement—Payee—"Fictitious person"—Payee existing person—Indention of drawer—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 7 (3).*—The plaintiff agreed with one White to draw a cheque payable to "Kerr or order." The cheque was to be given by White to Kerr in exchange for the transfer of certain shares. White, instead of doing this, forged the indorsement of Kerr's name on the cheque, which he then paid into his own account with the defendant bank, who received payment for it from the plaintiff's bank. There was in fact a person named Kerr, and the plaintiff intended that that person should receive payment of the cheque. In an action against the defendant bank to recover for the conversion of the cheque.

Held, that Kerr was not a "fictitious person" within section 7 (3) of the Bills of Exchange Act, 1882, and, therefore, that the defence that the cheque was in the circumstances a cheque payable to "bearer" failed, and the bank were liable to make good the loss the plaintiff had sustained.—MACBETH v. NORTH AND SOUTH WALES BANK, *H.L.*, 353; 1908, *A.C.*, 137.

See also Bankruptcy.

#### BILL OF SALE:—

Validity of—Affidavit—Occupation of maker—Married woman carrying on separate business—Described as "wife of A. B."—Provision for payment of insurance money to grantee—Bills of Sale Act, 1878 (41 & 42 Vict. c. 31, s. 10 (2)—Bills of Sale Act, 1882 (45 & 46 Vict. c. 43), ss. 8, 9.—Where a married woman living with her husband, A. B., carries on a separate business, the question whether a description of her in the affidavit filed on registration as "the wife of A. B., of the same place, commission agent," is sufficient or in-

sufficient as to render the bill of sale bad, is a question of degree, and the test to be applied is that laid down by Martin, B., in *Luckin v. Hamlyn* (1869, 18 *W. R.* 43, 21 *L. T.* 366), where he says: "The word 'occupation' in this Act means the business in which a man is usually engaged to the knowledge of his neighbours. The intention is that such a description should be given that if inquiry be made in the place where the person resides he may be easily identified."

Where there is a provision for insurance of the chattels by the grantor of a bill of sale, and "that he will expend any moneys paid in consequence of loss or damage by fire under such policy in discharge of the moneys secured by these presents," it does not vitiate the bill of sale as making uncertain the time for payment of the moneys lent contrary to the form in the schedule to the Act of 1882.—*NEVERSON v. SEYMOUR, K.B.D.*, 12.

See also Bankruptcy.

#### BREACH OF PROMISE:—

*Promise by married man—Validity of promise—Public policy.*—No action will lie upon a promise of marriage made by a married man when the other party knows at the time of the promise that he is married, such a contract being void as against public policy.—*WILSON v. CARNLEY, C.A.*, 239; 1908, 1 *K. B.* 729.

#### CHARGING ORDER:—

*Absolute—Contingent equitable interest of judgment debtor—Government stocks and stock in the Bank of England—Notice of order to the bank—Effect upon the legal interest—Transfer at the direction of the trustee in whose name the stock is standing—Duty of the bank to transfer notwithstanding the charging order—Notice in lieu of *distringas*—Practice.*—1 & 2 Vict. c. 110 ss. 14, 15—3 & 4 Vict. c. 82, s. 1—*R. S. C., XLVI.*—Where a judgment creditor has obtained a charging order absolute upon the contingent equitable interest of a judgment debtor in Government and Bank of England stock, standing in the name of a trustee, the bank is compellable to transfer the respective stocks at the direction of the trustee, notwithstanding that notice of the charging order has been served upon the bank. The judgment creditor can protect his rights by giving notice to the trustee and by issuing a notice in lieu of *distringas* upon the bank.—*ADAM v. BANK OF ENGLAND, Joyce, J.*, 682.

See also Execution.

#### CHARITY:—

*1. Will—Charitable bequest—Appointment of trustee holding religious office—General religious or charitable intent.*—The fact that the trustee of a gift holds a religious or charitable office is not sufficient to enable the court to hold that there is a general dedication of the gift to religious or charitable purposes if on the terms of the gift it is competent to such trustee to apply it for purposes which are neither religious nor charitable.—*DAVIDSON, RE, MINTY v. BOURNE, C.A.*, 622.

*2. Will—Charitable uses or emigration uses—Uncertainty.*—A gift for such charitable uses or such emigration uses as the trustees think fit is not charitable, and is void for uncertainty.—*SIDNEY, RE, HINGESTON v. SIDNEY, C.A.*, 262; 1908, 1 *Ch.* 488.

*3. Will—Gift to charitable society—Gift for purposes not necessarily charitable—Uncertainty.*—A gift to a charitable society, to be applied for purposes not necessarily charitable, to be determined by the society, is not a good charitable gift.—*FREEMAN, RE, SHILTON v. FREEMAN, C.A.*, 262; 1908, 1 *Ch.* 720.

*4. Will—Gift to persons who have shown practical sympathy, either as amateurs or professionals, in the pursuit of science in any of its branches—Uncertainty—Validity of bequest.*—A testator directed his trustees "to employ the whole residue of my estate, means, and effects in instituting and carrying on a scheme for the relief of indigent bachelors and widowers, of whatever religious denomination or belief they may be, who have shown practical sympathy, either as amateurs or professionals, in the pursuits of science in any of its branches, whose lives have been characterized by sobriety, morality, and industry, and who are not less than fifty-five years of age, or of aiding any scheme which now exists or may be instituted by others for that purpose."

Held, that the bequest was not invalid on the ground of uncertainty.—*WEIR v. BROWN, H.L.*, 261; 1908, 4 *C.*, 162.

See also Revenue, Will.

#### CHARTER-PARTY.—See Ship.

#### CHAUFFEUR.—See Master and Servant.

#### CHEQUE.—See Banker, Bill of Exchange, Limitations.

#### COMPANY:—

*1. Director's fees obtained as director of another company.*—A director of a company, who qualifies for directorship of a second

company as the holder of shares therein, which are the property of the first company, whose trustee and nominee he is, is under no obligation to account for fees received as director of the second company. His remuneration arises, not by virtue of the first company's shares, but by virtue of his contract with the second company.—*DOVER COALFIELDS EXTENSION, LIMITED, RE, C.A.*, 43; 1908, 1 *Ch.* 65.

*2. Reconstruction—Sale of undertaking and assets to new company—Partly-paid shares in purchasing company—Voluntary winding up—Companies Act, 1862 (25 & 26 Vict. c. 89), s. 161.*—It is no part of the function of the memorandum of association of a company to define under the corporate objects the distribution of the assets after the corporate life is over, and though the memorandum and articles may provide how as between the corporators the corporate assets shall be dealt with after liquidation, their purpose is to define the position of a shareholder as a shareholder and not to bind him as an individual, and his position so defined must be in accordance with the provisions of the Companies Acts. Consequently, a company cannot by its memorandum of association exclude the operation of section 161 of the Companies Act, 1862, in the event of a sale by the company of the whole of its undertaking to another company in consideration of shares in the purchasing company, the winding up of the selling company being in contemplation.

*Cotton v. Imperial and Foreign Agency and Investment Corporation* (1892, 3 *Ch.* 454) overruled.—*BISGOOD v. HENDERSON'S TRANSVAAL ESTATES, LIMITED, C.A.*, 412; 1908, 1 *Ch.* 743.

*3. Reconstruction—Winding-up for purpose of invalid reorganisation—Notice of resolution—Validity of winding-up.*—If sufficient notice has been given to the shareholders of intention to pass a resolution for winding up a company, and the resolution is duly passed and confirmed, the liquidation is not invalidated by the simultaneous passing of other *ultra vires* resolutions.—*THOMSON v. HENDERSON'S TRANSVAAL ESTATES, LIMITED, C.A.*, 456; 1908, 1 *Ch.* 765.

*4. Shares—Death of member—Registration of executors—Right to "clean" registration—Order of names—Companies Act, 1862 (25 & 26 Vict. c. 89), ss. 25, 30.*—A company registered under the Companies Acts, 1862-1900, is not entitled to enter on the register of members a statement that certain members are registered "as executors of" a deceased shareholder. Where there are two or more joint shareholders they are entitled to have their names entered on the register in such order as they think fit.—*RE SAUNDERS & CO, Warrington, J.*, 225; 1908, 1 *Ch.* 415.

See also Libel, Mortgage, Revenue.

#### CONTRACT:—

*Frauds, Statute of—Agreement not to be performed within one year—Time of performance deduced from subject-matter of contract—29 Car. 2, c. 3, s. 4.*—By an oral agreement the plaintiff agreed to employ the defendants as his sole agents for the sale of a patented article until the patent should be sold to a company. The patent had then eleven years to run. The patent was not sold to a company. The plaintiff having terminated the agency, the defendants claimed damages for breach of agreement.

Held, that the agreement was not one which, upon its face, was not to be performed within one year from the making thereof, and therefore section 4 of the Statute of Frauds did not apply.—*LAVALLETTE v. RICHES & CO, C.A.*, 279.

See also Breach of Promise, Gaming, Restraint of Trade.

#### CONVEYANCING ACT.—See Executors, Landlord and Tenant.

#### COPYRIGHT:—

*1. "Dramatic piece"—Infringement—Dissimilarity in words—Similarity in characters and make-up—Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 18), s. 1—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2.*—A "dramatic piece," within the meaning of section 1 of the Dramatic Copyright Act, 1833, must be one which is capable of being printed and published. Mere stage situations, scenic effects, make-up, and gestures without words are not the subject-matter of protection under those Acts. Where the words of two dramatic pieces are materially similar, then the stage situations, scenic effects, stage gestures, and make-up may be considered so as to see if one piece is an infringement of the other.—*TATE v. FULLBROOK, C.A.*, 279; 1908, 1 *K. B.* 821.

*2. "Dramatic piece"—"Pantomimical sketch"—Reproduction by cinematograph—Selling films—Infringement—Dramatic Copyright Act, 1833 (3 & 4 Will. 4, c. 18), s. 1—Copyright Act, 1842 (5 & 6 Vict. c. 45), s. 2.*—A "dramatic piece" within the meaning of section 1 of the Dramatic Copyright Act, 1833, must be one which is capable of being printed and published.

The plaintiffs alleged that the defendants had infringed their sole right of representing or performing a farce or pantomimical

sketch, which from its character could not be reduced into writing, and which had not even any written stage directions, entitled "The Mumming Birds," by (1) reproducing it at public places of amusement by means of a cinematograph; and (2) by the manufacture, offering for sale, and selling films which could be used by others for that purpose.

Held, that the sketch in question was not a "dramatic piece" within the meaning of the Copyright Acts, and therefore there had been no infringement; but,

Held, further, that the representation of a dramatic piece by cinematograph would be an infringement, although the selling of films which could be so used would not give a right of action against the seller, the remedy of the owner of the copyright being against the person who, having bought the films, actually exhibited them in a cinematograph.

*Tate v. Fullbrook* (52 SOLICITORS' JOURNAL, 279; 1908, 1 K. B. 821), considered and followed.—*KARNO v. PATHÉ FRÈRES, K.B.D.*, 499.

3. *Pictures—Assignment—Foreign copyright—International Copyright Act, 1886 (49 & 50 Vict. c. 33)—Order 28th November, 1887—Assignment qualified by undertaking not to reproduce without consent of the assignor.*—M. & S. assigned the British copyright in two pictures to the plaintiffs upon the plaintiffs undertaking not to reproduce the pictures without the consent of M. & S. The plaintiffs obtained the said assignment for the purposes of proceeding against the defendants for infringement of the copyright in these pictures.

Held, that an assignment in writing of the copyright in a picture which is qualified by a contemporaneous undertaking not to reproduce without the consent of the assignor, is not a valid assignment so as to enable the assignee to sue for infringement without joining the assignor as co-plaintiff, and also that the assignment in this case was not *bona fide* to transfer the copyright. The right of an owner of the British copyright in a picture is not identical with the right of the owner of a patented invention of an article.—*LANDEKER v. WOLFF, Joyce, J.*, 45.

4. *Unpublished picture—Common law right—Pirated copy—Innocent publication—Damages.*—The owner of an unpublished picture, who has not registered the same under the Fine Arts Copyright Act, 1862, has at common law, and apart from any statutory protection, the right to recover damages against any person who, even innocently and in good faith, publishes a copy of such picture.—*MANSELL v. VALLEY PRINTING CO., C.A.*, 660.

#### COSTS:—

1. *Depriving successful defendant—Discretion—Appeal—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 49.*—In an action by the owner of houses against the occupier for waste in converting part of one of the houses into a shop, the judge, who tried the action without a jury, found for the defendant, but deprived her of costs upon the ground that she ought to have approached her landlord before doing what she did. Upon appeal,

Held, that as this was a matter not relevant to the question to be adjudicated upon, there were no materials upon which the judge could exercise his discretion to deprive the defendant of costs, and an appeal lay from his decision to the Court of Appeal without leave.—*EDMUND v. MARTELL, C.A.*, 10.

2. *Speculative action—Motion that plaintiff's solicitor should be ordered personally to pay defendants' taxed costs.*—In a speculative action brought to recover damages for personal injury the evidence at the trial shewed that the action was wholly unwarrantable. As the plaintiff was a man of straw, the defendants, judgment with costs having been entered for them, moved that the solicitor for the plaintiff should be ordered personally to pay their taxed costs.

Held, that although the solicitor's clerk who had taken instructions and prepared the brief had been guilty of reprehensible conduct, there was no absolute proof that the solicitor had not acted *bona fide* in the matter. There was nothing wrong or illegal in taking up a speculative action so long as the solicitor took reasonable care to assure himself that the plaintiff had a case fit to be brought into court. In the present case the solicitor deposed that he had given the matter his consideration, and had decided on the documents that the plaintiff had a fair chance of succeeding. He was therefore entitled to the benefit of the doubt, and it would not be fair to order him to personally pay the defendants' costs. At the same time, the defendants ought not to pay more than their own costs of the motion, which for the reason above stated was dismissed.—*WARREN v. LONDON ROAD CAR CO., K.B.D.*, 13.

See also County Court, Solicitor.

#### COUNTY COURT:—

1. *Arbitration—Submission to arbitration in contract—Action on contract—Jurisdiction of county court judge to stay proceedings—Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 4 and 27.*

A county court judge has jurisdiction to stay proceedings under section 4 of the Arbitration Act, 1889.—*MORRISTON TIN PLATE CO. v. BROOKER & CO., K.B.D.*, 210; 1908, 1 K. B. 403.

2. *Costs—Action for damages, claiming perpetual injunction, with alternative claim for damages—Failure of claim for damages and injunction—£3 recovered on alternative claim—Scale of costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 119—County Court Rules, 1903 and 1904, ord. 53, rr. 1 and 11.*—The plaintiff brought an action in the county court for trespass, alternatively for disturbance of his tenancy, against his landlord, claiming an injunction. In the alternative he claimed for compensation in respect of improvements under his agreement for a lease. The defendant counter-claimed for a declaration that the tenancy had ceased by his re-entry. Judgment was given for the plaintiff on the second part of his claim for £3 and for the defendant on the counter-claim. Costs on each judgment. Subsequently the county court judge, on a review of taxation, gave the plaintiff his costs under column B of the county court scales of costs, holding that he was bound to do so by ord. 53, r. 11, of the County Court Rules, 1903.

Held, that this decision was wrong, and that the plaintiff's costs must be taxed on the lower scale.—*CLINTON v. BENNETT, K.B.D.*, 46; 1908, 1 K. B. 109.

3. *Jurisdiction—Action of tort by negligence, remitted to—Joiner of claim under Employers' Liability Act, 1880.*—Where an action in the High Court for damages for personal injuries caused by the negligence of the defendants is remitted to the county court, and the plaintiff in his particulars of claim in the county court combines with his claim for tort an alternative claim under the Employers' Liability Act, 1880, the county court has jurisdiction to try the latter claim.—*WARD v. WEBER, K.B.D.*, 482.

4. *Practice—Suing wrong party—Non-suit or judgment for defendants—Depriving successful defendants of costs—County Courts Act, 1888 (51 & 52 Vict. c. 43), rr. 88, 93, 113, 120.*—Where a county court judge without warrant deprives a party of costs or directs the wrong party to pay costs, that is a matter of law appealable under section 120 of the County Courts Act, 1888.

Where from the plaintiff's evidence it appears that he has sued the wrong party, and that the defendant is not the party, if any, who is liable, judgment should be given for the defendant. Accordingly in such a case, where the county court judge had non-suited the plaintiff and deprived the defendants of costs on the ground that they had not given every assistance and information to the plaintiff to enable her to sue the right parties on appeal the court entered judgment for the defendants, which precluded the plaintiff from suing them again, and attached the ordinary consequences of such a judgment by allowing the defendants their costs.—*WESTGATE v. CLOWE, K.B.D.*, 13; 1908, 1 K. B. 24.

See also Bankruptcy, Execution, Licensing Law, Practice.

**COVENANT.**—See Landlord and Tenant, Practice, Settlement.

#### CRIMINAL LAW:—

1. *Appeal—Court of Criminal Appeal—Criminal Appeal Act, 1907 (7 Ed. 7, c. 23), s. 6 (2)—Criminal Appeal Rules, 1908, No. 9.*—Where the Court of Criminal Appeal dismisses an appeal from a conviction, notwithstanding section 6 (2) of the Criminal Appeal Act, 1907, and rule 9 of the Criminal Appeal Rules, 1908, a person against whom an order of restitution has been made on the conviction has no right to appear before the Court of Criminal Appeal where that court does not annul or vary the order of restitution.—*REX v. ELLIOTT, C.C.A.*, 535; 1908, 2 K. B. 452.

2. *Appeal against verdict—Evidence of previous imprisonment—Omission by judge to expressly tell jury to disregard it.*—On an appeal against a conviction for feloniously uttering a counterfeit coin, it appeared that the prisoner after uttering the coin at a public-house had walked away, but observing that he was being followed by a policeman and a barman from the public-house, ran away. This was the only evidence of guilty knowledge. The prosecution alleged that the prisoner had uttered a similar bad coin to the same person a fortnight previously; but the prisoner proved conclusively that that was not so, as at that time he was in prison. The learned judge summed up strongly in favour of the prisoner, but omitted to expressly tell the jury to disregard the fact that the prisoner had been in prison before. The appeal was allowed on the ground of this omission.—*REX v. LEE, C.C.A.*, 518.

3. *Evidence of accomplice—No denial of offence when formally charged—Corroboration.*—It is the universal practice of the judges to tell the jury that they ought not to return a verdict of guilty on the uncorroborated evidence of an accomplice, although there is no rule of law that the evidence of an accomplice must be corroborated.

On an indictment for sodomy the only evidence offered as corroboration of the testimony of an accomplice was the fact that

when formally charged with the offence by the police the prisoner made no answer. The judge who tried the case did not warn the jury that they ought not to convict on the uncorroborated evidence of the accomplice.

Held, that the fact that the prisoner made no answer to the formal charge was not corroboration, and that as there was no corroboration of the evidence of the accomplice, and the judge had omitted to warn the jury in accordance with the usual custom, the court would quash the conviction.—*REX v. TATE, C.C.A.*, 699.

4. *False pretences—Amendment of indictment—Substitution of different charge.*—By section 13 of the Debtors Act, 1869, a person is guilty of a misdemeanor “if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud.” After a true bill has been found, an indictment under this section charging a man that in incurring a debt he obtained credit under certain false pretences cannot be amended so as to charge him with obtaining the credit by fraud.—*REX v. BENSON, C.C.R.*, 516; 1908, 2 K. B. 270.

5. *Larceny—Stealing pheasants' eggs which have been collected—Indictment, what must shew—Court for receiving—Form of—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 91.*—In a court for receiving under section 91 of the Larceny Act, 1861, it is unnecessary to state that the stealing of the article received amounts to a felony at common law or under the Larceny Act, 1861.

An indictment charging that the defendant, then being servant to Sir W. G., “one thousand pheasants’ eggs of the goods and chattels of and of and belonging to” Sir W. G., his master, “feloniously did steal, take, and carry away against,” &c., charges larceny, as it sufficiently shews that the offence alleged is that of taking eggs which have been collected or reduced into possession.

*REX v. ROUTH* (East P. C., c. xvi, s. 41) distinguished.—*REX v. STRIDE, C.C.R.*, 209; 1908, 1 K. B. 617.

6. *Manslaughter—Injury inflicted more than a year and a day before death.*—It is still the law, that to support a charge of manslaughter death must occur within a year and a day of the time when the injuries causing it were inflicted. Non-application of section 4 (1) of the Criminal Appeal Act.—*REX v. DYSON, C.C.A.*, 535.

7. *Murder—Sentence of death—Commutation by His Majesty—Appeal against commuted sentence.*—No appeal to the Court of Criminal Appeal lies against a sentence substituted by His Majesty, on the recommendation of the Home Secretary, for the death sentence passed by the court of trial.—*REX v. LORD, C.C.A.*, 740.

8. *Nuisance—Obstruction on highway—Finding there was an obstruction which did not appreciably interfere with traffic in street.*—The defendant was indicted for a common nuisance by placing and keeping a coffee-stall on a public carriage-way, and so obstructing the same. The jury returned a special verdict, finding that the coffee-stall was an obstruction, but that it did not appreciably interfere with traffic in the street.

Held, that, on this special finding, as it stood, the judge ought not to have entered a verdict of guilty against the defendant.—*REX v. BARTHOLOMEW, C.C.R.*, 208; 1908, 1 K. B. 554.

9. *Prevention of cruelty to children—Parent abandoning children—Custody of children—Omission to pay earnings to wife—Wilful neglect of children—Prevention of Cruelty to Children Act, 1904 (4 El. 7, c. 15), ss. 1, 23 (3).*—A parent who has abandoned his children may have “the custody” of them within the meaning of section 1 of the Prevention of Cruelty to Children Act, 1904.

A parent by merely omitting to pay any part of his earnings to his wife may “wilfully neglect” his children in a manner likely to cause them unnecessary suffering or injury to their health within the meaning of that section.—*REX v. CONNOR, C.C.R.*, 444; 1908, 2 K. B. 26.

10. *Sale of goods to which false trade description applied—Purchaser not misled—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), ss. 2 (2), 3 (1), 18—Exemption in case of trade description applied in 1887 to goods of a particular class to indicate the particular class.*—British made cigars, composed in part of Havana tobacco, sold in boxes with Spanish names and pictures upon them similar to those containing cigars made and grown in Cuba, are not sold under a trade description lawfully and generally applied in 1887 to goods of a particular class to indicate the particular class, within the meaning of section 18 of the Merchandise Marks Act, 1887, although such British cigars were sold in 1887 in boxes with a similar but not the same “get up.”—*REX v. BUTCHER, C.C.A.*, 716.

11. *Woman consenting to use of instrument to procure her own miscarriage—Indictment for aiding and abetting—No allegation in indictment that pregnant—Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 58.*—A. can be convicted of being “present, aiding and abetting and assisting” B. to use an instrument upon A. with the intent to procure the miscarriage of A., under section 58 of

the Offences Against the Person Act, 1861, although there is no allegation in the indictment that the accused was “with child” at the time of the offence.—*REX v. SOCKETT, C.C.A.*, 729.

CROWN.—See Probate.

CUSTOM:—

*Burgage tenure—Mortgage—Married woman—Dord acknowledged—No separate examination—Fines and Recoveries Act (3 & 4 Will. 4, c. 74).*—An alleged custom whereby a married woman can, with the concurrence of her husband, dispose of hereditaments of burgage tenure without separate examination under the Fines and Recoveries Act, or otherwise, is bad in law, as conflicting with the general principle of the common law that an exercise of free will is essential to alienations and contracts, and that a married woman was not in a position to exercise such free will.—*JOHNSON v. CLARK, Parker, J.*, 115; 1908, 1 Ch. 303.

DAMAGES:—

*Subsidence—Measure of damages—Risk of future subsidence—Remoteness—Right of owner to bring fresh action for each subsidence causing fresh damage.*—A surface owner has no cause of action against the owner of a substratum who has removed minerals therefrom unless and until actual damage results from the removal. Further, the surface owner can bring an action for fresh damage caused from time to time by fresh subsidence.

Held, therefore, that a sum awarded by an official referee, which was mainly composed of an allowance for the risk of future damage regarded as an element which would at once depreciate the market value of the premises, ought not to be allowed. But while so holding, the House intimated that the surface owner was entitled to something more than the sum which he had been called on to expend in actual repairs to cover depreciation in the value of the premises directly caused by the subsidence.

Judgment of Swinfen Eady, J. (1905, 2 Ch. 390), restored.

Judgment of the Court of Appeal (Collins, M.R., and Cozens-Hardy, L.J., Romer, L.S., dissenting) set aside.

*Bonomi v. Backhouse* (9 H. L. C. 503) and *Darley Main Colliery Co. v. Mitchell* (11 A. C. 127) considered and followed.—*TUNNCLIFFE & HAMPSON v. WEST LEIGH COLLIERY Co., H.L.*, 93; 1908, A. C. 27.

DEED:—

*Misrepresentation as to contents—Plea of non est factum—Validity—Mortgage—Execution.*—A misrepresentation as to the contents of a deed which is known by the person executing it to deal with the property will not support a plea of *non est factum*.—*HOWATSON v. WEBB, C.A.*, 11; 1908, 1 Ch. 1.

DISCOVERY.—See Practice.

DISTRESS:—

*Goods of under-lessee—Distress for rent due from head lessee—Exemptions—Public trade—Proprietary club—Pictures sent by members of club for exhibition and sale on commission.*—Pictures sent by members of a proprietary club to the committee of the club for exhibition or sale are not delivered to the proprietor of the club to be “managed in the way of his trade,” and are consequently liable to distress by the head lessors for rent due, even though the arrears were due, not from the proprietor of the club, who was an under-lessee, but from the head lessees.—*CHALLONER v. ROBINSON, C.A.*, 28; 1908, 1 Ch. 49.

See also Appeal, Fixtures.

DISTRINGAS.—See Charging Order.

DIVORCE:—

1. *Commission to take evidence—Petition and citation—Commission before service.*—A commission to take evidence in a matrimonial suit may issue before service of the petition and citation.—*GRIBBON v. GRIBBON, P.D.*, 193.

2. *Cross-suits—Foreign co-respondent—Dismissal from suit—Costs—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 28.*—Where a co-respondent, domiciled in a foreign country, had been dismissed from a suit on his own motion, the court declined to give the husband his costs, although the co-respondent had entered an unconditional appearance to the citation.—*BAKER v. BAKER, P.D.*, 413; 1908, P. 257.

3. *Deceased petitioner—Orders against respondent—Enforcement—Application by executors—Practice.*—Where a petitioner in divorce suit had died before the cause came on for hearing, the court refused to add her executors as petitioners to enable enforcement of certain orders for payment of alimony *pendente lite* and costs previously made against the respondent.—*SCHECK v. SCHECK, P.D.*, 551.

4. *Decree absolute—Motion by respondent—Necessary costs—Practice.*—Where a respondent husband asks that a wife shall elect to

have a decree *nisi* made absolute, or have her petition dismissed, the decree *nisi* may be made absolute on the husband providing the necessary costs.—*GOLD v. GOLD*, *P.D.*, 715.

5. *Double marriage—Rectification of decrees nisi and absolute.*—A wife who had been married both before a registrar and in church petitioned for a divorce, but only disclosed the fact of the religious ceremony. The error was only discovered after the decree absolute had been pronounced. On motion to rectify the decrees, the court granted the application provided that the petition was amended by inserting the date of the first marriage and that an affidavit of service on the respondent was filed.—*HAMPSON v. HAMPSON*, *P.D.*, 729.

6. *Foreign co-respondent—Notice of charges—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 28.—The court will give leave to dispense with naming in the petition a foreign co-respondent, who is domiciled out of the jurisdiction, on being satisfied that notice of the charges alleged in the petition has been served upon him.—*BOGER v. BOGER*, *P.D.*, 552.

7. *Judicial separation—Cruelty—Respondent's suicidal tendencies—Reasonable apprehension of danger to petitioner—Decree.*—Where a husband had repeatedly attempted to commit suicide, and the medical evidence shewed a danger of his developing homicidal symptoms, the court granted the wife a judicial separation.—*BARON v. BARON*, *P.D.*, 282.

8. *Jurisdiction—Foreign co-respondent—Motion to dismiss from suit.*—Where it was shewn that a co-respondent in a divorce suit, alleged to have committed adultery with the respondent in this country, was a foreigner domiciled in his native country, the court dismissed him from the suit.—*LEVY v. LEVY*, *P.D.*, 379; 1908, P. 256.

9. *Marriage in Jersey—Proof.*—Where the parties in a divorce suit had been married in Jersey, the court did not require formal proof of the marriage.—*EDEN v. EDEN*, *P.D.*, 483.

10. *Nullity suit—Insanity of respondent—Principles upon which court will grant decree.*—The court will grant nullity when satisfied that one party to the marriage was, while understanding the nature of the contract, not free from the influence of morbid delusions upon the subject.—*JACKSON v. JACKSON*, *P.D.*, 535.

11. *Restitution suit—Judicial separation—Petitioner in prison—Permanent alimony.*—A petition for judicial separation on the ground of statutory desertion extinguishes an order for permanent alimony made in a previous restitution suit. A petitioner serving a sentence of penal servitude is not to be allotted permanent alimony until immediately prior to or on release.

*Kelly v. Kelly* (11 W. R. 958, 4 Sw. & T. 227) distinguished.—*LESLIE v. LESLIE*, *P.D.*, 97; 1908, P. 99.

12. *Settlement—Agreement to pay allowance to guilty wife—Deed to be settled by registrar—Fresh terms inserted—Summons to judge.*—Where the terms of a deed are referred to the registrar for settlement, his decision is final, even though fresh terms, not included in the original agreement, are inserted.—*E. v. E.*, *P.D.*, 699.

13. *Settlement—Alteration of deed by respondent—Rectification—Decree absolute—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 45—*Matrimonial Causes Act, 1860* (23 & 24 Vict. c. 144), s. 6.—The court has power to order the rectification of a deed of settlement to comply with its original direction, although one of the parties by remarriage has in the meantime become domiciled without the jurisdiction.—*REES v. REES*, *P.D.*, 445.

14. *Settlement—Application by husband—Principle on which court will act—Income and capital—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85), s. 45—*Matrimonial Causes Act, 1859* (22 & 23 Vict. c. 51), s. 5.—On an application for a settlement under section 45 of the Matrimonial Causes Act, 1857, the underlying principle is that the court must endeavour to ascertain the nature and extent of the pecuniary change caused by the wife's adultery, and in order to do that it must look at the probable pecuniary position which the petitioner, his wife, and any issue of the marriage would have occupied if there had been no dissolution of the marriage. The court has jurisdiction to deal with capital as well as labour.—*LORRIMAN v. LORRIMAN*, *P.D.*, 490.

15. *Wife's petition—Adultery and desertion—Order against husband under Summary Jurisdiction (Married Women) Act, 1895* (58 & 59 Vict. c. 39), s. 4, 5, sub-section (a)—*Effect of such order—Matrimonial Causes Act, 1857* (20 & 21 Vict. c. 85).—Where a wife obtained a separation order under the Summary Jurisdiction (Married Women) Act, 1895, within two years from the time when her husband's desertion commenced, it was

Held, that she could not, after the two years had elapsed, allege in a petition for divorce that the respondent had deserted her without reasonable excuse for two years and upwards.

*Dodd v. Dodd* (1908, P. 189) followed.—*WILSON v. WILSON*, *P.D.*, 283.

16. *Wrong name in petition—Amendment—Practice.*—Where a wrong name has been inserted in petition, and the person mentioned has intervened, the court will on an *ex parte* application give leave to amend on the petition being re-served on the respondent and notice being given to the intervener of abandonment.—*HARDING COX v. HARDING COX*, *P.D.*, 518.

#### DOCK.—See Harbour.

#### DOGS :—

1. *Complaint that dog was dangerous—Order of magistrates that "dog should be led by a leash by day and chained up at night"—Discretion to order justices to state cause—Certiorari—Rule discharged.*—An order was made by justices that a certain dog, alleged to be dangerous, should be kept under proper control and led by a leash by day and chained up at night. The owner applied to the justices to state a cause, alleging, *inter alia*, that the words "and chained up at night" rendered the order *ultra vires*. The justices refused. A rule for a *mandamus* was then obtained calling upon the justices to state a cause.

Held, that, as the main question, whether in making the order the justices had acted *ultra vires*, could more properly be raised by writ of *certiorari*, the rule for a *mandamus* to the justices to state a cause would be discharged, as in the discretion of the court, the application to justices being based on several grounds, some of which were frivolous, the facts were unsuitable to raise the main question which the court was asked to determine.—*REX v. OWEN*, *K.B.D.*, 132.

2. *Dangerous animal—Savage dog—Intervening act of third person—Liability of owner.*—The defendant was the owner of a dog, known by him to be savage. A servant of the defendant instigated the dog to bite the plaintiff.

Held, by Cozens-Hardy, M.R., and Farwell, L.J., that it was a wrongful act to keep an animal known to be dangerous, and that the person so keeping it was liable for the consequences of his wrongful act, even though the immediate cause of damage was the act of a third party.

By Kennedy, L.J.—It was not in itself unlawful to keep an animal *secreta natura*, but the person keeping it was responsible for the results; though in certain events, such as the intervening act of a third party, he would be relieved of his responsibility.—*BAKER v. SNELL*, *C.A.*, 681; 1908, 2 K. B. 352.

See also Veterinary Surgeon.

#### EASEMENT :—

Light—Prescription—Absolute right—“Consent or agreement”—Occupying tenant—Prescription Act, 1832 (2 & 3 Will. 4, c. 71), ss. 3, 4.—No absolute and indefeasible right can be acquired under the Prescription Act, unless and until an action is commenced by which the right is brought into question. Until this occurs the right remains inchoate and can be defeated by a “consent or agreement” by the occupying tenant.—*HYMAN v. VAN DEN BERGH*, *C.A.*, 114; 1908, 1 Ch. 167.

See also Light, Settled Land.

#### ECCLESIASTICAL LAW :—

Rule for prohibition—Writ of sequestration—Dilapidations—Failure on part of the incumbent—“Shall refuse or neglect”—Ecclesiastical Dilapidations Act, 1871, ss. 22, 23.—Where a bishop or patron requires dilapidations to be made good by an incumbent, and the latter does not within the prescribed period raise objection to the surveyor's report, the mere fact that he has tried unsuccessfully to get a loan and is himself not in a financial position to pay the money, gives the bishop or patron, under section 23 of the Act of 1871, power to issue sequestration, the “failure” to repair being equivalent to a “refusal” or “neglect” to do the repairs within the meaning of that section.—*LOUGHMAN, EX PARTE*, *K.B.D.*, 47.

#### EDUCATION :—

1. Non-provided school—Direction altering character of school—Ultra vires—Jurisdiction of the court to entertain complaint—Education Act, 1902 (2 Ed. 7, c. 42), ss. 3, 7.—A county council directed (*inter alia*) that a non-provided school should in future be used only for teaching children attending the school until they passed the third standard, and that scholars who passed that standard should attend another school. The managers of the school in question complained that the directions given by the county council were *ultra vires*, as they in effect altered the character of the school. The managers refused to comply with the directions, and the county council threatened to cease paying the expenses of the school. The main question argued was whether the court had jurisdiction to entertain the complaint, it being contended by the defendant council that any appeal against the directions must be made to the Board of Education.

Held, that the court had jurisdiction, and that the plaintiffs had not ceased to be entitled to carry on the school as a fully recog-

nized non-provided elementary school by reason of non-compliance with the directions of the defendants to convert the school into an infants' and junior school, and that the plaintiffs were entitled to the relief they sought.—*WALFORD v. WEST RIDING COUNTY COUNCIL, K.B.D.*, 263.

2. *Public elementary school—Assistant teacher—Punishment contrary to regulations of local education authority—Assault—New trial.*—The Court affirmed the order of the Divisional Court (*ante*, p. 59; 1908, 1 K. B. 160) sending the case back to the county court judge for him to decide whether he would grant a new trial upon the ground alone that the verdict was against the weight of evidence, but expressed no opinion upon the point of law determined by the Divisional Court as to the authority of an assistant teacher in a public elementary school to inflict corporal punishment.—*MANSELL v. GRIFFIN, C.A.*, 376; 1908, 1 K. B. 947.

#### ELECTION LAW:—

1. *Ballot papers, validity of—Ballot Act, 1872, Schedule II, s. 25.*—At a municipal election certain voting papers were marked with a cross against one candidate's name and with a diagonal line against the other candidate's name. The validity of the vote in each case was questioned.

Held, that, although standing alone, a line might sufficiently indicate the voter's intention to support the candidate against whose name the line appeared, yet that when the voter used the statutory mark of a cross properly placed against one candidate's name, he must be assumed to have intended to vote for that candidate alone.—*CLARKSFIELD WARD OF OLDHAM, RE, COOPER v. OGDEN, K.B.D.*, 192.

2. *Dwelling-house qualification—Inhabitant occupier or lodger—Landlord resident in house—Evidence of repute to rebut objection—Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 3—Parliamentary and Municipal Registration Act, 1878 (41 & 42 Vict. c. 26), s. 5; s. 28, sub-section 10.*—Under section 28, sub-section 10, clause 3, of the Parliamentary and Municipal Registration Act, 1878, evidence of repute may, in the circumstances there mentioned, be received by a revising barrister in support of an objection to the name of a person being retained on a list of voters, but not for the purpose of defeating the objection.

A revising barrister having admitted evidence of repute against an objection to the names of a large number of persons being retained on the occupiers' list of voters for a borough, and having allowed the names to stand, the Court, upon a case stated, remitted the matter to the revising barrister to continue the revision in respect of the names objected to, notwithstanding that the time fixed for the revision had expired.

Decision of the Divisional Court (52 SOLICITORS' JOURNAL, 534) reversed.—*KENT v. FITTALL, C.A.*, 714.

3. *Household qualifications—Part of house—“Inhabitant occupier”—“Lodger”—Resident landlord—Objection—Discretion of revising barrister.*—Objections were lodged against the names of certain voters being placed in the occupiers' instead of the lodgers' list for the borough of Devonport, and evidence was given shewing (1) that the house in which the voter resided was an ordinary dwelling-house; (2) that the landlord or landlady was rated in respect of the whole house; (3) that the landlord or landlady was resident in the house.

Held, discharging a rule for a *mandamus* directed to the revising barrister to shew cause why he should not state a case for the opinion of the court, that the question whether the three facts proved by the objector in each case established a *prima facie* case which called for an inquiry was one entirely for the revising barrister. The barrister had held that they did not, and was therefore bound to retain the names of the voters on the list.—*REX v. BELL, K.B.D.*, 46.

4. *Service franchise—“Dwelling-house”—Representation of the People Act, 1884 (48 & 49 Vict. c. 3), s. 3.*—A coachman occupied, in virtue of his service, a bedroom over a stable, but had full board in his master's house with the other servants.

Held, that the objection against the service franchise claimed by the coachman had rightly been overruled by the revising barrister.

*Stribling v. Halse* (16 Q. B. D. 246) discussed and followed.—*LASKEY v. MICHELMORE, K.B.D.*, 47.

#### ELECTRIC LIGHT:—

1. *Corporation—Contract to supply—Want of seal—Damages or penalty—St. Marylebone Electric Lighting Order, 1901—Electric Lighting Order Confirmation (No. 1) Act, 1901—1 Ed. 7, c. cxxvii.*—The defendants agreed, partly by correspondence and partly verbally, to supply electric light at a 240 voltage to new premises which the plaintiffs were then erecting by a certain date. On faith of this undertaking the plaintiffs put in a suitable installation, but when the day came to open the premises the defendants failed to furnish a supply. The plaintiffs thereupon sued for damages for breach of contract.

Held, that, although the contracts relied on were not under seal, the action was maintainable, and further that the plaintiffs' claim was not limited to a penalty of 40s. a day recoverable only in a court of summary jurisdiction.—*BOURNE & HOLLINGSWORTH v. MARYLEBONE BOROUGH COUNCIL, K.B.D.*, 281.

2. *Local authority—Boxes in street—Notice to district surveyor—London Building Act, 1894 (57 & 58 Vict. c. cccii.), s. 145.*—Where a limited company is granted powers under a provisional order, confirmed by statute, to supply electric light and energy, and under the provisions of that order seeks to construct in a street boxes for the purpose of repairing or, if necessary, renewing the electric wires, such boxes are buildings, structures, or works within section 145 of the London Building Act, 1894, and a notice under that section must be served on the district surveyor before they are commenced.

*Whitechapel Board of Works v. Crow* (84 L. T. 595) followed.—*CITY OF LONDON ELECTRIC SUPPLY CO. v. PERKINS, K.B.D.*, 281.

#### ESTATE DUTY.—See Revenue.

#### ESTATE TAIL.—See Settlement.

#### ESTOPPEL.—See Attachment, Mortgage, Solicitor.

#### EXECUTION:—

1. *Charging order—Judgment debt payable by instalments—Default in payment of instalments—Power of judge to order execution to issue—Execution Act, 1844 (7 & 8 Vict. c. 96), s. 61—Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 5—R. S. C. XLII. 24.*—Upon an application under section 5 of the Debtors Act, 1869, for the committal of a judgment debtor for non-payment of a judgment debt, the judge of the High Court to whom bankruptcy business was assigned made an order for payment of the debt by instalments. Some of the instalments being in arrear and unpaid, the judgment creditor applied to the judge in chambers for a charging order upon some money in court which was payable to the judgment debtor.

Held, that under ord. 42, r. 24, the judge in chambers could make a charging order, which was a form of execution, in respect of the unpaid instalments in arrear. In such a case the jurisdiction under section 61 of the Execution Act, 1844, to order execution to issue either for whole amount of the judgment debt remaining unpaid or for the unpaid instalments in arrear is not confined to the judge to whom bankruptcy business is assigned, but may be exercised by a judge of the High Court sitting in chambers.—*WOODHAM SMITH v. EDWARDS, C.A.*, 608.

2. *Writ of, sent to another county court—Time when goods of judgment debtor bound—Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 26—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 158.*—Where a warrant of execution is issued to the high bailiff of a county court and no goods of the judgment debtor being found in the jurisdiction of that court, the warrant is sent, under section 158 of the County Courts Act, 1888, to another county court in the jurisdiction of which goods of the judgment debtor are believed to be, the time when the writ is delivered to the proper officer to be executed, within the meaning of section 26 of the Sale of Goods Act, 1893, so as to bind the property in the goods of the execution debtor, is the time when it is delivered to the high bailiff on the second occasion.—*BESTALL CANDLE CO. v. DANIELS, K.B.D.*, 458; 1908, 2 K. B. 254.

#### EXECUTORS:—

1. *Appointment of new trustees by executor of last surviving trustee—Appointment by executor proving the will, other executors not having proved not joining—“Acting executors”—“Personal representatives”—Executor dying without having taken probate—Statute—Repeal—Will—“Implied incorporation of statute”—Lord Cranworth's Act, 1860 (23 & 24 Vict. c. 145), s. 27—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 71—Trustee Act, 1893 (56 & 57 Vict. c. 53), s. 10—Court of Probate Act, 1858 (21 & 22 Vict. c. 95), s. 16.*—A testator, by his will dated 1875, made provisions in the event of a new trustee or trustees of his will being appointed for the increase or reduction of the number of the trustees. He died in 1877. In 1894 one of three executors of his last surviving trustee appointed new trustees of the will; the executor appointing had proved, his co-executors were alive, but had not proved or renounced.

Held, that the effect of the words in the will and the saving clause of section 71 of Conveyancing Act was to incorporate Lord Cranworth's Act, 1860, in the will, and that the appointment, having been made by the acting executor, was good.

*Re Solomon and Meagher's Contract* (40 Ch. D. 508) and *R. Walker and Hughes' Contract* (24 Ch. D. 690) followed.

Held, further, that, by virtue of section 16 of the Court of Probate Act, 1858, the two co-executors having died without taking probate, the representation to the testator had gone and devolved as if these persons had never been appointed executors.—*BOUCHERETT, RE, JOYCE, J.*, 77; 1908, 1 Ch. 180.

2. *Will, construction of*—*No next-of-kin—Residue undisposed of—Equal pecuniary legacies to all the executors—Specific bequests to some—Beneficial title to residue—Right of executors.*—A testator by his will appointed three executors, to each of whom he gave a legacy of £1,000, and, in addition, he gave to one executor his foreign decorations, to another his diamond ring and his gold watch, and to the third he gave no specific legacy. The residuary personal estate was not disposed of by the will, and the testator died without leaving any next-of-kin. The Court of Appeal, reversing the decision of Swinfen Eady, J., held that the executors were beneficially entitled to the undisposed-of residuary estate, which was claimed by the Crown.

Held, affirming the decision of the Court of Appeal, that as the specific legacies to the executors were unequal, there was no presumption, notwithstanding the pecuniary legacies were equal, sufficient to rebut or destroy the legal title of the executors to the residue, and to shew that the testator did not intend them to take the residue beneficially.—ATTORNEY-GENERAL v. JEFFERYS, *H.L.*, 660.

See also Company, Lease, Revenue.

#### FACTOR :

*Mercantile agent—Pledge by broker—Factors Act, 1889* (52 & 53 Vict. c. 45), s. 2.—The expression "a mercantile agent" in section 2 of the Factors Act, 1889, means a mercantile agent quite independently of the kind of goods he deals in.

Held, therefore, that, where the pledger of goods, acting in the ordinary course of business as a mercantile agent, had, by violating a certain custom of the trade, pledged diamonds with a pawnbroker who took them in good faith and without notice of the circumstances in which they had been given to the agent by the true owner, the latter was protected by the provision to that effect in section 2 (1) of the Factors Act, 1889.

Decision of Channell, J. (1907, 1 K. B. 510), affirmed.—OPPENHEIMER v. ATTENBOROUGH, *C.A.*, 76; 1908, 1 K. B. 221.

#### FINANCE ACT.—See Revenue.

#### FISHERY :

*Prescription—Profit à prendre—Freeholders of manor—Right to take fish for sale.*—The law of England does not allow a right to fish without stint and for gain *in alieno solo* to pass as appurtenant to land, and it is not possible to find a legal origin for such a right.—CHESTERFIELD (LORD) v. HARRIS, *C.A.*, 639; 1908, 1 Ch. 230.

#### FIXTURES :

1. *Landlord and tenant—Distress—Machine screwed to bolts sunk in concrete.*—A gas engine, laid on a bed of concrete and screwed down on to bolts sunk in the concrete, is a fixture, possibly severable by the tenant, but a fixture and therefore not distrainable.—CROSSLEY v. LEE, *K.B.D.*, 30; 1908, 1 K. B. 86.

2. *Trade fixtures—Printing machine—Mortgage of lease—Hire-purchase agreement—Entry of mortgagee into possession.*—A machine which is kept in position by its own weight, and does not require fixing, is not a fixture, even though it is attached to and driven by fixed mechanism, and though its removal would cause some damage to the building.—NORTHERN PRESS AND ENGINEERING CO. v. SHEPHERD, *Eve. J.*, 715.

#### FORGERY.—See Bank, Bill of Exchange.

#### FRAUDS, STATUTE of.—See Contract.

#### GAMING :

1. *Betting—Agreement to give time and not to declare loser a defaulter—Validity of contract—Gaming Acts, 1710 (9 Anne c. 14), 1835 (5 & 6 Will. 4, c. 41), and 1845 (8 & 9 Vict. c. 109), s. 18.*—A promise by the defendant, who was a bookmaker, to the plaintiff, who was also a bookmaker, to pay him a certain sum, being the amount which the defendant lost to the plaintiff upon a bet, upon a later date, in consideration of the plaintiff giving the defendant until that time to pay the amount and not declaring him a defaulter with all the consequences attaching thereto, is a good contract founded on good consideration, and is enforceable at law.

So held by Gorell Barnes, P., and Farwell, L.J., dissenting.—HYAMS v. STUART KING, *C.A.*, 551.

2. *Betting debt—Compromise of claim—Forbearing to "post" defendant as defaulter at club—Consideration—Gaming Acts, 1845 (8 & 9 Vict. c. 109), s. 18; and 1892 (55 & 56 Vict. c. 9), s. 1.*—The plaintiff and the defendant, who were bookmakers, had had numerous betting transactions together, and the plaintiff claimed that a balance was due to him of £375, and pressed for payment of that sum. The defendant admitted the claim only to the extent of £355, and wrote asking the plaintiff to accept a post-dated cheque for the lesser sum. The plaintiff agreed, but the cheque on maturity was dishonoured. The plaintiff's solicitor then applied for payment

within three days. The defendant asked for time, promising that if the plaintiff did not post him as a defaulter at his club he would pay. This offer was accepted. In an action to recover the amount of the dishonoured cheque with interest,

Held, that, as there was good consideration for the promise to pay, quite apart from the bets, an action would lie on the cheque, although the Gaming Acts were pleaded.—GOODSON v. BAKER, *K.B.D.*, 302.

3. *Forbearance to sue—Consideration.*—In an action by a bookmaker to recover a sum of money, the defendant pleaded that the claim was in respect of betting transactions. The plaintiff admitted that the amount sued for was wholly in respect of bets upon horse-races made by the plaintiff with the defendant, but relied on the fact that in compliance with a request contained in a letter written by the defendant he forbore to sue the defendant, and had given him time to get the money, relying on the defendant's promise that if this was agreed to he would not only pay the debt in full, but interest up to payment.

Held, that, the plaintiff having shewn that there was a good consideration for the payment of the debt, apart from the original consideration, he was entitled to judgment.

HYAMS v. STUART KING (52 SOLICITORS' JOURNAL, 551) followed.—GOODSON v. GRIERSON, *K.B.D.*, 599; 1908, 1 K. B. 761.

4. *Lottery—Missing line competition—Editor's decision to be final—Gaming Act, 1802 (42 Geo. 3, c. 119), s. 1.*—The defendants, who were the proprietors of a weekly journal, announced in their journal that they would give a first prize of £300 for the best line in a limerick competition, a second prize of £100, two more prizes of £50 each, and in addition that they would send a sovereign each to 100 other readers by way of consolation; that every coupon sent in would be carefully examined by a competent staff, and would be judged entirely on its merits; and that the editor's decision was in all cases to be final. Each competitor was required to send 6d., and the names of the winners were to be announced in the issue of the journal published ten days after the last day for sending in the coupons. There were 60,000 competitors. The winning line and the name of the winner of the first prize were announced in the journal, and the plaintiff who had sent in a line identical with the winning line, but who had not been declared the winner, brought an action to recover the amount of the first prize.

Held, that the competition was a lottery, and that the action was not maintainable.—BLYTH v. HULTON & CO., *C.A.*, 599.

See also Bankruptcy.

#### GUARANTEE :

*Surety for a loan—Promissory note—Time given to principal debtor—Liability of surety.*—The ordinary doctrine that where time is given to the principal debtor the surety is thereby discharged does not apply where the security given is a promissory note, because a promissory note is a "promise to pay on demand," and therefore, unlike a bill of exchange, is a continuing security until payment has been made, and the surety released.—BELLINGHAM & CO. v. HURLEY, *K.B.D.*, 131.

#### HARBOUR :

1. *Dock—Rates—Exemption—“Bonâ fide engaged in discharging”*—*Barge after discharging not leaving dock by next tide—Rate for lying in dock on Sunday.*—A lighter finished discharging into a ship in a dock on Saturday afternoon, and the next available tide for leaving the dock was at midnight. She remained until Monday.

Held, that when the lighter stayed in the dock after midnight of Saturday she ceased to be "bonâ fide engaged in discharging" and the rate became leviable.—LONDON AND INDIA DOCKS CO. v. McDougall, *H.L.*, 713.

2. *Dock—Rates—Exemption—Lighter entering dock to unload into ship—Lighter leaving dock without unloading—West India Dock Act, 1831 (1 & 2 Will. 4, c. 52), ss. 78, 83.*—Under the West India Dock Act, 1831, the appellant company were empowered to levy certain rates on lighters and other craft entering any dock or lying therein, but lighters entering a dock to discharge or receive goods to or from on board any vessel in the dock were exempted from the rates so long as they were "bonâ fide engaged in discharging or receiving goods."

Held, that the exemption did not apply in the case of a lighter which had entered a dock for the "bonâ fide" purpose of discharging goods into a ship already there, but which in fact, being full, was unable to receive any cargo from the lighter.

Decision of the Court of Appeal (1908, 1 K. B. 786) reversed.—LONDON AND INDIA DOCKS CO. v. THAMES STEAM TUG AND LIGHTERAGE CO., *H.L.*, 713.

3. *Dock—Rates—Exemption—Lighter entering dock to unload into a ship—No part of this discharge effected—Remains on in dock and subsequently discharges it to another ship which entered the dock two*

*days after the lighter.*—A lighter entered a dock for the purpose of discharging into a ship which was then lying in the dock. The ship was unable to receive the cargo for want of space. Two days later another ship entered the dock, and the lighter discharged her cargo into that ship and then left the dock.

Held, that the lighter was not exempt from rates.—LONDON AND INDIA DOCKS CO. v. PAGE, H.L., 714.

#### HERIOT:—

*Manor—Customary freehold—Seisin—Mortgage by tenant.*—The tenant of a customary freehold of a manor, alienable by ordinary methods of assurance, executed a statutory mortgage thereof. On the death of the tenant while the mortgage was still subsisting,

Held, that the mortgagee was by the mortgage constituted in law the freeholder, and became the actual tenant to the lord of the manor, and, consequently, the lord was not entitled to a heriot on the death of the mortgagor, who did not die seised of the freehold in question.—COPESTAKE v. HOPER, C.A., 516; 1908, 2 Ch. 10.

#### HIGHWAY:—

1. *Extraordinary traffic—Traffic continued for many years—Yearly haulage contracts—Damages—Limitation of time—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 71), ss. 23—Locomotives Act, 1898 (61 & 62 Vict. c. 29), s. 12 (1) (b).*—In the course of the year ending the 31st of March, 1905, large quantities of stone for road-making were hauled over a certain highway by means of traction engines by two firms of contractors, with whom the Croydon Corporation had contracted for a supply of such stone during that year. Similar traffic had been conducted over the highway by contractors supplying stone to the corporation ever since 1893. In August, 1905, the plaintiffs, as the highway authority, commenced an action under section 23 of the Highways and Locomotives (Amendment) Act, 1878, and section 12 of the Locomotives Act, 1898, against the corporation to recover the expenses incurred by them in repairing the highway in consequence of the damage done thereto in the year ending the 31st of March, 1905, by the traffic in question. The writ in that action was issued on the 22nd of August, 1905. Walton, J., held that the traffic in 1904-1905 was extraordinary traffic; that it was conducted in consequence of the order of the corporation; that damage was "the consequence of work extending over a long period" within the meaning of section 12 (1) (b) of the Locomotives Act, 1898, and that the highway authority could recover in respect of all the damage done during the year.

Held, on appeal by the defendants, that the plaintiffs could only recover for damage done during the twelve months preceding the issue of the writ—namely, from the 22nd of August, 1904, to the 31st of March, 1905, and the appeal to that extent was allowed, but without costs.—BROMLEY DISTRICT COUNCIL v. CROYDON CORPORATION, C.A., 77; 1908, 1 K. B. 353.

2. *Subsidence caused by mining operations—Liability of mine owner—Measure of damages—Highway vested as street in urban authority—Public Health Act, 1875 (38 & 39 Vict. c. 56), s. 149—Highway and Locomotive (Amendment) Act, 1878 (41 & 42 Vict. c. 77), ss. 10, 27.*—In an action by an urban authority for damages in respect of injury to a highway vested in them under section 149 of the Public Health Act, 1875, caused by mining operations which led to the subsidence of the highway and of the surrounding land,

Held, that the true measure of damages was, not the cost of restoring the highway to its original level, but only the cost of such repairs to the highway as would render the highway as commodious as before the subsidence.

Decision of Jelf, J. (1905, 2 K. B. 823), affirmed.—WEDNESBURY CORPORATION v. LODGE HOLES COLLIEBY, H.L., 620; 1908, A.C. 323.

#### HUSBAND AND WIFE:—

1. *Authority of wife to pledge husband's credit—Rebuttal of presumption.*—Where a husband and wife are living together, and the husband makes a sufficient allowance to his wife for household necessaries, the presumption that the wife has authority to pledge her husband's credit may be rebutted, even when the husband has not expressly forbidden his wife to pledge his credit.

Remington v. Broadwood (1902, 18 T. L. R. 270) followed.—SLATER v. PARKER, K.B.D., 498.

2. *Savings by wife—Husband absent earning livelihood—Money sent home for household expenses—Savings by wife out of—Ownership of.*—The savings of a married woman from moneys sent her by her husband for household expenses, and invested in her own name, belong to her husband.—BIRKETT v. BIRKETT, K.B.D., 241.

See also Intestacy.

#### INFANT:—

*Necessaries—Infant sufficiently supplied—Burden of proof.*—A plaintiff suing for goods supplied to an infant must show not only that the goods supplied were necessities as distinguished

from luxuries, but also that they were suitable to the actual requirements of the infant at the time of the sale and delivery.—NASH v. INMAN, C.A., 335; 1908, 2 K. B. 1.

See also Restraint of Trade.

#### INNKEEPER:—

*Liability beyond £30 for property belonging to guest—Onus probandi—Deposit expressly for safe custody—Innkeepers' Liability Act, 1863 (26 & 27 Vict. c. 41), s. 1 (2).*—A commercial traveller engaged a bedroom at the defendant's hotel, and saw the porter put his bag in the bar room. He did not call the attention of the proprietors to the fact that the bag contained jewellery valued at nearly £200. On asking for the bag in the evening it was found to have disappeared. It was suggested at the trial, but not proved, that it had been stolen by a gang of expert thieves who it was subsequently discovered had been staying in the hotel at the time as guests. In an action against the hotel proprietor to recover the value of the property lost,

Held, that the defendants were entitled to judgment under the Innkeepers Act, 1863, because the plaintiff had not proved that he had expressly deposited the bag for safe custody with the proprietors of the inn, nor had he proved that the loss was due to their neglect to take reasonable care of the goods.

Decision of the Judge of the Extra Division of the Court of Session (reported 45 Sc. Law Rep. 113) affirmed.—WHITEHOUSE v. PICKETT, H.L., 620.

#### INSURANCE:—

1. *Life—Accident policy—“Intervening cause” of death.*—A clause in a policy of insurance provided that "This policy only insures against death . . . where accident within the meaning of the policy is the direct or proximate cause thereof, but not where the direct or proximate cause thereof is disease or other intervening cause, even although the disease or other intervening cause may itself have been aggravated by such accident, or have been due to weakness or exhaustion consequent thereon, or the death accelerated thereby."

Held, that "other intervening cause" meant some new and independent cause.

Accordingly, in a case where a man fell from his horse, and so was wet to the skin, and the result was—his vitality being lowered—an onset of the pneumo-coccus, followed by pneumonia, and resulting in death, it was

Held, that disease or other intervening cause was not the proximate cause of the death.—ETHERINGTON v. LANCASHIRE AND YORKSHIRE ACCIDENT INSURANCE CO., K.B.D., 661.

2. *Life—Incorrect statements made by assured—Innocent misstatement—Materiality—Basis of contract.*—In a proposal for a policy on her life the applicant answered certain questions, and she signed a declaration that, to the best of her knowledge and belief, the particulars were true, and she agreed that they should be the basis of the contract between her and the insurance company. Subsequently the insurance company sent a document to a doctor selected by them asking him to obtain answers to the several questions in the document from the applicant, and to make such investigations as to her past and present state of health as would enable him to advise the company. The questions are headed, "Questions to be put to the applicant (with any necessary explanation) by the medical officer who will fill in the applicant's answers," and the applicant signed a declaration that the answers were true. The questions related to her health. Two of her answers, which were material to the risk, were inaccurate, but were made *bona fide* and not fraudulently.

Held, that the answers to the questions put to the applicant by the doctor were not made the basis of the contract.

The judgment for the defendants entered by Lord Alverstone, C.J. (*ante*, p. 517) was set aside, and a new trial was, in the circumstances, ordered.—JOEL v. LAW UNION AND CROWN INSURANCE CO., C.A., 740.

3. *Life—Representation by agent—Inducing assured by misrepresentations to continue policy—Recovery by assured of premiums paid.*—The plaintiff took out a policy of insurance with the defendants, through an agent, upon the life of her brother. After paying one year's premium she told the agent she would not go on paying the premiums. The agent induced her to do so, however, telling her that after she had paid five years' premiums in all she would be entitled to hold the policy free of future premiums. Relying on this unauthorized misrepresentation by the agent she paid the premiums as they became due for four more years. She then declined to pay any more premiums, and the company refusing to keep the policy alive except upon the payment of premiums, the plaintiff sued to recover the premiums paid by her during the last four years as money had and received.

Held, that the plaintiff could recover these premiums.—KETTLEWELL v. REFUGE ASSURANCE CO., C.A., 158; 1908, 1 K. B. 545.

4. *Marine—“Contraband of war”—Warranty—Contraband persons.*—*Sembler*, a warranty in a policy of marine insurance on a ship during a war, “no contraband of war,” in its ordinary meaning applies to goods and not to persons.

Decision of Bigham, J. (1908, 1 K. B. 910), affirmed.—YANGTSE INSURANCE ASSOCIATION v. INDEMNITY MUTUAL MARINE ASSURANCE CO., C.A., 550; 1908, 2 K. B. 504.

5. *Marine—Warranty of freedom from capture—Capture of neutral ship by belligerent—Subsequent loss by perils of the sea—Condemnation by prize court—Relation back.*—A policy of marine insurance contained a clause “warranted free from capture, seizure, and detention, and the consequences of hostilities.” The ship was, during hostilities between Russia and Japan, captured by a Japanese cruiser, and while being taken to a Japanese port where there was a Prize Court was lost by a peril of the sea. The ship was subsequently condemned by the Prize Court. In an action on the policy Channell, J., gave judgment for the defendant, and the Court of Appeal upheld that decision.

Held, dismissing the plaintiff's appeal, that the loss was occasioned by capture within the meaning of the exception, and that what happened subsequently was immaterial on the question of liability.—ANDERSON v. MARTEN, H.L., 680; 1908, A.C. 334.

See also Revenue, Sale of Goods.

#### INTESTACY:—

*Husband and wife—Will—Total failure of legatees and executor under will—Administration with will annexed—Right of widow under the Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), ss. 1, 2.*—All the legatees and the executor under a will predeceased the testator, but administration, with the will annexed, was granted by the Probate Division. The testator left a widow but no issue surviving.

Held, that there was a total intestacy within the meaning of the Intestates' Estates Act, 1890, and that the widow was entitled to the benefits of the Act.—CUFFE, Re, Joyce, J., 661.

#### JUSTICES:—

1. *Discretion of magistrate to refuse a summons—Libel—Prosecutor fails to appear in support of charge—Absence due to mistake—Mandamus.*—If a magistrate refuses to grant a summons, exercising his discretion on facts extraneous to the charge, or dismisses the case without going into the facts, because the prosecutor failed to appear in support of the charge, being under a mistaken idea that as only formal evidence was to be given his attendance was unnecessary, the court, at the instance of the accused, will direct a *mandamus* to issue, as the accused has the right to be heard and either committed for trial or discharged.—REX v. CURTIS BENNETT, K.B.D., 583.

2. *Disqualification—Bias.*—A justice sat at a quarter sessions for the County of London upon the hearing of an appeal against an assessment to the poor rate of the property of a gas company. The justice was a member of a borough council and the chairman of an assessment committee in the County of London, within the district of which, however, the gas company neither owned nor occupied any property.

Held, that the justice was not disqualified from sitting.

Judgment of the Divisional Court (51 SOLICITORS' JOURNAL, 720) affirmed.—REX v. LONDON JUSTICES, C.A., 238.

3. *Disqualification—Bias—Assessment appeal.*—The chairman and certain justices of Middlesex, some of whom were members of the Middlesex County Council, and other county councillors of Middlesex, sat at quarter sessions to determine appeals by the Metropolitan Electric Tramways (Limited) against two rates made by the Assessment Committee for the Hendon Union and the overseers for the parish of Hendon. The ground of the appeal by the tramways company was that an insufficient deduction from the gross estimated rental had not been made in arriving at the rateable value. The Assessment Committee took objection to the appeals being heard by the court as constituted, alleging that there was a probability of bias which disqualified some of the court from sitting to hear the appeals. It was suggested that the amount of the rates levied would affect the profits of the tramways company, which, as the county council who had leased the undertaking to the company, received a rent varying on the profits made, gave them a pecuniary interest in the result of the appeals, although only as trustees. Further, it was said that after the feeling which had been freely expressed in the district, the public might not be satisfied as to the fairness of the decision, because it might be said that those who took part in it were the landlords of the appellant company.

Held, that as here none of the justices had any personal pecuniary interest in the result of the appeals, the test to be applied was whether the facts would suggest to the mind of any reasonable man that the justices would be biased in giving their decision. On the facts no such suggestion could be drawn, and the

allegation of possible bias could not, therefore, be upheld.—THE KING v. MIDDLESEX JUSTICES, K.B.D., 458.

See also Doga.

#### LAND DRAINAGE:—

*Cleansing channel of stream—Stream silted up—Damage to mill—“Injury to any other land”—Land Drainage Act, 1847 (10 & 11 Vict. c. 38), s. 14.*—The bed of a stream which formed the boundary of the respondent's land, became silted up, with the result that the water in the stream was bayed back to a mill wheel higher up the stream on the adjacent land belonging to the appellant and submerged it to the height of one foot, thus preventing its working. The respondent did nothing actively to prevent the ordinary flow of the water.

Held, that this was not injury to land within the meaning of section 14 of the Land Drainage Act, 1847, and that therefore the appellant could not require the respondent to cleanse and scour the channel of the stream, and in default of the latter doing so obtain a warrant from justices authorizing him to enter the respondent's land and cleanse and scour the channel, and recover the expense thereof from the respondent.

Judgment of the Divisional Court (1908, 1 K. B. 485) affirmed.—FINCH v. BANNISTER, C.A., 354; 1908, 2 K. B. 441.

#### LANDLORD AND TENANT:—

1. *Covenant against assignment without consent—Payment for leave to assign—Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 3.*—Section 3 of the Conveyancing Act, 1892, does not make the payment of a fine for licence to assign illegal so that it can be recovered back by the lessor who pays it, but the demand for a fine relieves the lessee from his obligation to procure the assent.—ANDREW v. BRIDGEMAN, C.A., 148; 1908, 1 K. B. 596.

2. *Consent not to assign without consent of lessors—Proviso for re-entry—Statutory transfer of term—Power of statutory transferees to assign without consent—Effect of proviso for re-entry—Interpretation of statutes—Metropolis Water Act, 1902 (2 Ed. 7, c. 41), ss. 24 (1 and 2), 37, 45—Metropolitan Water Board (Various Powers) Act, 1907 (7 Ed. 7, c. clxxiv.), s. 53—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 177.*—The plaintiffs as statutory successors in title of the G. J. W. Co. held certain premises under a lease containing a covenant not to sell, assign, or sub-let without the reversioners' consent and a power of re-entry by the reversioners upon breach of the covenant. The plaintiffs agreed to assign the term, but the reversioners withheld their consent. Upon the plaintiffs claiming that they were entitled to assign without consent under their statutory powers,

Held, upon construction of the statute, that the plaintiffs obtained the estate of their predecessors subject to the liabilities of the lease and the term being determinable by entry after breach of the covenant, the statutes (after the transfer to the plaintiffs) did not alter the reversioners' rights or enable the plaintiffs to grant a greater estate than that which they possessed.

Held, further, that as the Metropolis Water Act, 1902, transferred property from certain metropolitan water companies to the plaintiffs, subject to the liabilities of those companies, and without providing any compensation to private individuals, the Act was not analogous to the Land Clauses Consolidation Acts, in which property became vested in railway companies after agreement with owners or under the provisions of those Acts.

*Spicer v. Tottenham and Hampstead Junction Railway Co.* (L.R. 4 Eq. 112), *Bailey v. De Crespigny* (L.R. 4 Q.B. 180) and *Kirby v. School Board for Harrogate* (1896, 1 Ch. 437) distinguished.—METROPOLITAN WATER BOARD v. SOLOMON, Joyner, J., 443; 1908, 2 Ch. 214.

3. *House let out in separate tenements—Duty to light staircase—Accident to person visiting tenant.*—The defendant was the owner of a building, the separate floors of which he let to different tenants for offices. The defendant retained possession and control of the staircase. The staircase was lighted by means of gas brackets on each landing, the gas being supplied, not by the defendant, but from meters belonging to the tenants of the several offices, and each tenant when he left at night turned out the gas outside his office. The plaintiff was a canvasser in the employment of the tenant of offices on the second floor, and late one evening, after all the gas on the several landings had been turned out, he came down the staircase in the dark and, mistaking his way, was going down to the basement when he fell through a door and was injured. He brought an action to recover damages for the injuries sustained upon the ground that it was the defendant's duty to light the staircase.

Held, that, apart from contract, there was no duty upon the defendant to light the staircase, and that no implication of any such contract could be made, and that therefore he was not liable.

*Miller v. Hancock* (41 W.R. 578; 1893, 2 Q.B. 177) discussed.—HUGGETT v. MILES, C.A., 481; 1908, 2 K. B. 278.

4. *Licensed house—Covenant to occupy personally—Covenant against assignment—Consent not to be unreasonably withheld—Assignment to brewery company.*—A covenant in a lease of licensed premises that the lessee will reside on the premises and personally carry on the business of a licensed victualler therein is violated by an assignment to a limited company, and affords good ground for the lessor refusing his assent to such assignment.—*JENKINS v. PRICE, C.A.*, 42; 1908, 1 Ch. 10.

5. *Severance of reversion—Severance by law—Condition of re-entry—Public body—Exercise of statutory power—Breach of covenant—Action for breach or compensation—Notice of breach—Acquiescence—Conveyancing Act, 1881 (44 & 45 Vict. c. 41), ss. 10, 14.*—The severance of a reversion before the Conveyancing Act, 1881, does not prevent the lessor from taking advantage of a condition of re-entry, if the severance is by compulsion of law, as, for instance, by a compulsory sale under the Lands Clauses Act.

Where a public body pulls down a house, part only of which it has acquired under its statutory powers, the owner of the remaining portion has a remedy by action, and is not compelled to resort to compensation under section 68 of the Lands Clauses Act.

Notices of breaches of covenants under section 14 of the Conveyancing Act, 1881, need not indicate what the lessee is required to do; it is sufficient if they specify the breaches complained of.—*PIGGOTT v. MIDDLESEX COUNTY COUNCIL, Eve, J.*, 698.

See also Administrator, Bankruptcy, Distress, Fixtures, Lease, Licensing Law.

#### LANDS CLAUSES ACT:—

1. *Compulsory acquisition of land—Natural and peculiar adaptability for construction of reservoir—Consent of water board necessary for such construction—Element of adaptability in assessing value.*—In estimating the value of lands under the Lands Clauses Acts, 1845, an umpire took into consideration their natural and peculiar adaptability for the construction of a reservoir, although such a reservoir could not be constructed without the consent of the water board that was in fact taking the lands, as such a construction would interfere with a line of their pipes.

Held, that, as a matter of law, the umpire was not bound to exclude from his consideration this special value of the land. For the owner of the lands ought not to be deprived of their value merely because Parliamentary powers would have to be obtained for the construction of such a reservoir, and also the board themselves might have become purchasers.—*LUCAS AND CHESTERFIELD GAS AND WATER BOARD, RE, K.B.D.*, 173; 1908, 1 K. B. 571.

2. *Taking land—Notice to treat—Leasehold premises—Surrender of leases after notice—Grant of new lease—Lands Clauses Act, 1845 (8 & 9 Vict. c. 18), s. 18.*—After a notice to treat, under the Lands Clauses Act, 1845, for certain premises, which were subject to a three years' lease, had been served upon the lessor's agent, the latter by arrangement between the lessee and the plaintiff took a surrender of the lease from the lessee, and granted to the plaintiff a new lease for three years upon similar terms to those contained in the old lease. Neither the lessee nor the plaintiff knew of the notice to treat.

Held, that, as the lessor had no power to create a new interest in the land after the service of the notice to treat, the lease to the plaintiff was void, and that therefore the surrender of the old lease, which was conditional upon the grant of the new lease, was also void, and the plaintiff or the lessee, as trustee for him, was entitled to compensation in respect of the unexpired portion of the old lease.

Judgment of Jelf, J. (1908, 1 K. B. 611), affirmed.—*ZICH v. LONDON UNITED TRAMWAYS (LIMITED), C.A.*, 456; 1908, 2 K. B. 126.

3. *Vendor and purchaser—Costs to be borne by purchaser—Vendor dying before completion—Cost of taking out probate by executor to complete—Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), s. 82—Elementary Education Acts, 1870 and 1873 (33 & 34 Vict. c. 75, ss. 20, 21; 36 & 37 Vict. c. 86, s. 15).*—Where a vendor, under a contract for the sale of lands governed by the Lands Clauses Consolidation Act, 1845, died before completion, and the vendor's executrix took out probate for the purpose of completing.

Held, that the costs of taking out probate were not payable by the purchaser under section 82 of the Act.—*ELEMENTARY EDUCATION ACTS, RE, Joyce, J.*, 681.

#### LEASE:—

*Mining lease—Covenant running with land—Covenant to pay compensation for damage to surface—Covenant with owners or occupiers for time being of surface—Executors, administrators, and assigns of surface owners.*—A covenant by a mining lessee with his lessors, who did not own the surface, and "with others, the owners or owner, occupiers or occupier for the time being" of the lands demised by the lease, to pay compensation for any damage caused by letting down the surface, can be enforced by the executors and

trustees, or the assigns, of a surface owner at the date of the lease.—*FORSTER v. ELVERT COLLIERY CO., C.A.*, 224; 1908, 1 K. B. 629.

See also Landlord and Tenant.

#### LIBEL:—

1. *Plaint of justification and fair comment—Imputation of improper motives—Misdirection.*—Fair comment must be based on truly stated facts, and must not convey imputations of an evil sort except so far as the truly stated facts warrant the imputation. It is for the judge to rule whether personal attack can be reasonably inferred from the truly stated facts, but if he does so rule, the question for the jury is whether the truly stated facts warrant the personal imputation, not whether the comment tends to prejudice the plaintiff.—*HUNT v. STAR NEWSPAPER CO., C.A.*, 376; 1908, 2 K. B. 309.

2. *Privilege absolute—Further report of official receiver—Companies (Winding-up) Act, 1890 (53 & 54 Vict. c. 63), s. 8 (2).*—The further report of an official receiver made under section 8 (2) of the Companies (Winding-up) Act, 1890, is absolutely privileged.—*BOTTOMLEY v. BROUGHAM K.B.D.* 225; 1908, 1 K. B. 584.

3. *Statement of claim—Breach of rules of pleading—Embarrassing—Application by defendants to strike out—Discretion of court—Jurisdiction.*—A statement of claim in a libel action alleged that the libel had been published to certain persons named and to others whose names were unknown to the plaintiffs, but known to the defendants, and that the plaintiff would rely upon the publication thereof to every person to whom they might discover it was published. The defendants moved that the statement of claim should be struck out so far as it referred to the publication of the libel to persons unknown to the plaintiffs on the ground that it was embarrassing because they knew not how to plead to it; and, further, that it gave the plaintiff an opportunity of administering "fishing interrogatories" with the object of ascertaining whether in fact he had been so libelled. The Court of Appeal, reversing a decision of Coleridge, J., ordered that the statement of claim should stand.

Held, that there was jurisdiction, and that it was a matter of discretion whether interrogatories could be administered when a statement of claim was so drawn.—*RUSSELL v. STUBBS, H.L.*, 580.

See also Practice.

#### LICENSING LAW:—

1. *Compensation—Licensing Act, 1904—Evidence as to business done.*—The question of compensation for an ante-1869 beerhouse, which had been recently rebuilt, was referred by quarter sessions to the Commissioners of Inland Revenue for the assessment of compensation. The brewers claimed for the loss of the licence £1,250 but were only awarded £150.

Held, that the amount of compensation was a question of fact, and was to be ascertained by considering, in view of all the circumstances, what sum an intending purchaser would give for the premises, based on the return of profits for the last seven years. The evidence here was that the profits were not more than the rent the premises would let for as a shop or private house, and therefore no compensation was payable to the brewers in respect of the loss of the licence, but only in respect of the costs of alteration, loss on trade fixtures, and out-of-pocket expenses for cleaning the premises.—*LASSELLS & SHARMAN (LIMITED), K.B.D.*, 534.

2. *Compensation for licence refused—Division of amount amongst parties interested—Reference of, to county court—Appeal from county court—Principles of division between lessor and intermediate lessee—County Courts Act, 1898 (51 & 52 Vict. c. 43), s. 120—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 2 (1) (2) (3).*—Where the question of the division of an amount of compensation between the parties interested in a licence, which has been refused under section 2 (1) of the Licensing Act, 1904, is referred to a county court judge under section 2 (3) of that Act, an appeal lies from his decision on a point of law to the High Court.

In dividing such a sum between the lessors and the lessees for a term of the licensed premises (it being agreed that the tenant to the lessees should take a sum rateably from the two other parties), regard must be had to the rights of the parties under the lease. If there is nothing in the lease or in the character of the property demised which will lead to the value of the property being lessened when the reversion accrues, if there is nothing to waste the property, the division will be according to the extent and duration of the respective interests—proportions determined by actuarial calculation.—*LIVERPOOL CORPORATION v. PETER WALKER & SON (LIMITED), K.B.D.*, 31; 1908, 1 K. B. 28.

3. *Measurement of beer—“Measures marked according to imperial standard”—“Long pull”—Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 8.*—By section 8 of the Licensing Act, 1872, all

intoxicating liquor sold by retail, if not in cask or bottle and not in a less quantity than half-a-pint, must be sold in measures marked according to the imperial standard.

Held, that it was no offence under that section to measure a pint of beer by using a half-pint measure twice; and having measured the beer thus in the presence of the customer, the seller was entitled, if he chose, to add to it a "long pull."—PENNINGTON v. PINCOCK, K.B.D., 413; 1908, 2 K. B. 244.

4. *Occasional licence—Grant of licence on condition that house is open during certain hours only—Jurisdiction—Licensing Acts, 1872 (35 & 36 Vict. c. 94), s. 29; and 1904 (4 Ed. 7, c. 23), s. 4.*—Justices have jurisdiction to grant an occasional licence under section 29 of the Licensing Act, 1872, to the holder of a licence which has been granted under section 4 of the Licensing Act, 1904, for a term upon condition that the house is only open during certain hours of each day.—GROH v. HESKETH, C.A., 239; 1908, 1 K. B. 654.

5. *"Permitting drunkenness"—Accepting as a lodger a man then drunk—Licensing Acts, 1872, s. 13; and 1902, s. 4.*—The appellant, the landlord of a fully-licensed hotel, was convicted of permitting drunkenness on his premises, within the meaning of section 13 of the Act of 1872 and section 4 of the Act of 1902. It was admitted or proved that a man came to the hotel about 10.30 p.m., and was provided with a bedroom. The man then went to the smoking-room, where he fell asleep. He was drunk to the knowledge of the landlord when he came to the house and asked to be put up for the night. He was found drunk and asleep in the smoking-room by the police.

Held, that the conviction must be affirmed, because the landlord was under no duty to allow the man, when he found he was drunk, to come upon his premises.—THOMPSON v. MCKENZIE, K.B.D., 302; 1908, 1 K. B. 905.

6. *Renewal—Report to quarter sessions—Evidence as to matters not stated in report—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 1, sub-section 2.*—Where an application for the renewal of a licence is referred to quarter sessions by the licensing justices with their report thereon under section 1, sub-section 2, of the Licensing Act, 1904, upon the ground that the house is not required having regard to the character and necessities of the neighbourhood, evidence is admissible before the quarter sessions as to the structural condition and state of repair of the house, though those matters are not referred to in the report, for the purpose of differentiating it from other houses in the neighbourhood.

Judgment of the Divisional Court (1907, 2 K. B. 340) affirmed.—HOWE v. NEWINGTON JUSTICES, C.A., 113; 1908, 1 K. B. 260.

See also Rating.

#### LIGHT :—

*Ancient lights—Obstruction—Nuisance—Alteration of dominant tenement—Abandonment—Inquiry as to damages—Form of reference—Prescription Act, 1832 (2 & 3 Will. 4, c. 71).*—The plaintiffs in 1897 altered the front of their licensed premises, thereby substantially diminishing the amount of light which the business rooms in the house formerly had. The old front was principally of glass, and had been put in when the house was built some eighty years ago. In 1904 the plaintiffs brought an action claiming damages for interference with ancient lights caused by new buildings put up by the defendants. The defendants contended, *inter alia*, that but for the alterations in 1897 the new buildings could not have caused an actionable nuisance. Buckley, J., dismissed the action and refused an inquiry. The Court of Appeal ordered an inquiry on the assumption that the plaintiffs had not abandoned any of the ancient lights they enjoyed prior to 1897, as they could, if they wished, restore the old front. On the report of the referee the appeal was dismissed.

Held, that the plaintiffs must be taken to have abandoned so much of their ancient lights as was lost by the alterations of 1897, but that a reference had been rightly directed as to damages by the Court of Appeal.

Coles v. Home and Colonial Stores (Limited) (1904, A. C. 179) considered and followed.—COWPER v. MILBURN, H.L., 316.

See also Easement.

#### LIMITATIONS, STATUTE of :—

1. *Part payment—Giving cheque for part of debt—Cheque held over by arrangement—Payment of cheques within six years before action—Limitation Act, 1823 (21 Jac. 1, c. 10).*—Where a cheque was drawn by a debtor and given to his creditor more than six years before action brought, in part payment of a debt due from him, and owing to an arrangement between the parties the cheque was not presented for payment until a date within six years before action brought, the promise to pay the debt, which is implied from the part payment, must be deemed to have been made on the date when the cheque was given, and not on the date when the cheque

was presented and paid. An action to recover the debt is therefore barred by the Statute of Limitations.—MARRECO v. RICHARDSON, C.A., 516; 1908, 2 K. B. 584.

See also Mortgage.

#### LOCAL GOVERNMENT :—

1. *Appeal to Local Government Board—Local Act—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 268, 269—Portsmouth Corporation Act, 1883 (46 & 47 Vict. c. cxxi.), ss. 16, 31.*—Section 31 of the Portsmouth Corporation Act, 1883, which provides that any person aggrieved by any order, determination, or decision of the corporation under the Act, may appeal to quarter sessions, or may appeal to the Local Government Board "under the provisions of" section 268 of the Public Health Act, 1875, gives an alternative appeal to the Local Government Board, not in the case of every order, determination, or decision of the corporation, but merely in cases similar to those in which there is an appeal to the board under section 269 of the Act of 1875—that is, in cases where the corporation are empowered to recover summarily any expenses incurred by them, or to declare such expenses to be private improvement expenses. A rule  *nisi pro mandamus* had been granted directed to the Local Government Board to hear an appeal against a determination of the Portsmouth Corporation disapproving of certain plans.

Held, that the rule which had been made absolute by the Court of Appeal must be discharged, there being no appeal given by section 31 of the local Act to the Local Government Board in this case as the appeal did not come within section 269 of the Act of 1875.—REX v. LOCAL GOVERNMENT BOARD, H.L., 300.

2. *Audit of accounts—Auditor—Powers—Surcharge—Certiorari to quash—Error of fact—Appeal—Jurisdiction—Local Government Act, 1899 (62 & 63 Vict. c. 14), s. 14—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 247—Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), s. 35.*—The court has jurisdiction to review the decision of an auditor of the Local Government Board both in matters of fact and of law.

Per Cozens-Hardy, M.R.—Under section 247 of the Public Health Act, 1875, an auditor has power to decide that a member of a local authority has been guilty of negligence or misconduct, and to assess the amount of loss caused thereby, but he has no power to administer an oath or to subpoena witnesses.

Per Fletcher Moulton, L.J.—An auditor's duties are confined strictly to auditing, and he has no power to inquire either into the conduct of servants of a corporation or into the responsibility of members of a corporation for an act of negligence on the part of the corporation.

Per Farwell, L.J.—An auditor is authorized and required by the statute to act to some extent in a judicial capacity, and his jurisdiction extends to checking and challenging all items of administration as contra-distinguished from policy.—REX v. ROBERTS, C.A., 171; 1908, 1 K. B. 407.

3. *Rural district council—Sanitary rate—Special expenses—Mutual mistake as to calculation of amount—Retrospective rate—Mandamus to levy rate—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 229, 230.*—By certain agreements entered into between the plaintiffs and the defendants the drainage area of certain parishes in the defendants' district was extended and connected with the general drainage system of the plaintiffs, and it was provided that the defendants should pay to the plaintiffs as yearly rent an amount calculated on the rateable value of all the property within such extended areas. As the result of a mutual mistake the defendants only paid to the plaintiffs the amount calculated on the houses in such areas actually connected with and draining into the plaintiffs' drainage system.

Held, that, the debt being ascertainable, though not properly ascertained though a mistake common to both parties, there must be judgment for the plaintiffs for the amount claimed, with interest.

Held, further, that the effect of *Rex v. Leigh Rural District Council* (1898, 1 Q. B. 836) being to give the court a discretion as to granting the *mandamus*, no relief should be granted in the present case to the plaintiffs by way of *mandamus*, the effect of which would be to throw the expense on one year which should have been borne by another.—CROYDON CORPORATION v. CROYDON DISTRICT COUNCIL, Neville, J., 95; 1908, 1 Ch. 222.

See also London, Poor Law, Shop, Unemployed.

#### LOCOMOTIVE.—See Highway.

#### LONDON :—

*Scavenging—Removal of refuse—Ordinary refuse of hotel—House or trade refuse—Right of appeal—Special case—Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), ss. 30, 33—Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33.*—Section 33 (2) of the Public Health (London) Act, 1891, provides that if a dispute arises

between the owner or occupier of any premises and the sanitary authority as to what is to be considered "trade refuse," a petty sessional court may by order determine whether the subject-matter of dispute is or is not trade refuse, and the decision of the magistrate shall be "final."

Held, affirming the decision of the Court of Appeal (1907, 1 K. B. 910), that the above provision precluded any appeal from the decision of the petty sessional court by way of special case stated under the Summary Jurisdiction Act, 1879, s. 33, or otherwise.—*GORDON HOTELS v. WESTMINSTER CITY COUNCIL, H.L.*, 334; 1908, A. C. 142.

See also Landlord and Tenant, Local Government.

#### LOTTERY.—See Gaming.

#### LUNATIC:—

*Person incapable of managing his affairs—Person appointed to carry on his business—Personal liability for goods sold to business—Lunacy Act, 1890 (53 & 54 Vict. c. 5), ss. 116 (1) (d) (2), 120 (c). 124.*—Where a person is appointed under the provisions of the Lunacy Act, 1890, to carry on the business of a person who is through mental infirmity, arising from disease or age, incapable of managing his affairs, though not a lunatic so found, the former carries on the business as agent for and on behalf of the latter, and is not personally liable for the price of goods supplied to the business unless he does something to make himself personally liable.—*PLIMPTON v. BURKINSHAW, C.A.*, 533; 1898, 2 K. B. 572.

MALE SERVANT.—See Revenue.

MANDAMUS.—See Justices, Local Government.

MANOR.—See Fishery, Heriot.

MARGARINE.—See Adulteration.

MARRIAGE SETTLEMENT.—See Settlement.

MARRIED WOMEN.—See Custom, Husband and Wife, Intestacy.

#### MASTER AND SERVANT:—

1. *Chauffeur—Private electric brougham—Owner contracts with company to garage brougham and supply driver—Injury to third party caused by negligence of chauffeur—Liability of company.*—The owner of an electric brougham contracted with the defendants to garage the brougham, supply electric energy, and supply a chauffeur at so much a week inclusive. By the negligence of the chauffeur, the chauffeur, while driving the brougham for his own purposes, and contrary to the orders given him by its owner, injured the plaintiff. In an action to recover damages from the defendants,

Held, that the defendants were liable, the chauffeur being their servant.—*NORRIS v. WOLSELEY TOOL AND MOTOR CAB CO., K.B.D.*, 116.

2. *Contract of employment—Wrongful dismissal of servant—Covenant not to carry on business.*—Total repudiation of a contract of service by the employers, by the wrongful dismissal of the servant, emancipates the servant from all restraints of the contract, as it had determined, so that he is not liable for damages for breach of a covenant therein contained not to engage in any similar business to that carried on by the employers.—*GENERAL BILL-POSTING CO. (LIMITED) v. ATKINSON, C.A.*, 240; 1908, 1 Ch. 537.

3. *Workmen's compensation—Agreement—Estoppel—Workmen's Compensation Act, 1897.*—The filing of a memorandum of agreement under Schedule II., s. 8 (2), of the Workmen's Compensation Act, 1897, to pay a workman injured by accident compensation during his then incapacity, does not, in the event of death following during the continuance of the payment, estop the employer from calling evidence to show that the death of the workman was not caused or accelerated by the accident.—*CLEVERLEY v. GAS LIGHT AND COKE CO., H.L.*, 75.

4. *Workmen's compensation—Average weekly earnings—Grade of employment—Enforced stoppages—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), First Schedule, ss. 1, 2.*—In calculating the average weekly wages of a workman who has met with an accident which entitles him to compensation under the Workmen's Compensation Act, 1906, if it is impracticable at the date of the accident to commute the remuneration, the court should have regard to the average earnings of persons in the same grade of employment, meaning by grade the particular rank in the industrial hierarchy occupied by the workmen, such as shepherd, collier, carter, &c., and not to his greater or less excellence in that rank, though it is still open to consider whether the individual workman is above or below the average in that rank. A step up or a step down from one grade to another is to be regarded as commencing a fresh employment, but absence due to illness or other causes beyond the control of the workman is to be disregarded and the employ-

ment reckoned as continuous, notwithstanding such absence.—*PERRY v. WRIGHT, C.A.*, 146; 1908, 1 K. B. 441.

5. *Workmen's compensation—Common law liability—Action at common law more than six months after accident—Failure of action—Subsequent proceedings under Workmen's Compensation Act—Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37) ss. 1 (2) (b), (4) and 2.*—A workman has an option either to claim compensation under the Workmen's Compensation Acts or to take proceedings against his employer at common law, but if he elects to proceed at common law his right to claim under the Workmen's Compensation Act is thereby precluded, unless the proceedings at common law are commenced within six months from the date of the accident, in which case, if they are unsuccessful, he may apply under sub-section 4 of section 1 of the Workmen's Compensation Act, 1897, to have the compensation under the Act assessed.—*CRIBB v. KYNOCHS (LIMITED), C.A.*, 581.

6. *Workmen's compensation—Course of employment—Onus probandi—Evidence—Ship's log—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1.*—The burden of proof that an accident arose out of and in the course of employment lies on the workman or his representatives, and is not discharged by evidence which is equally consistent with the accident having arisen out of and in the course of the employment or otherwise.—*MCDONALD v. S.S. "BANANA," C.A.*, 741.

7. *Workmen's compensation—Course of employment—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 1.*—The local condition that to entitle a workman to compensation the accident must happen "on, in, or about" the place of employment is no longer in force, but the accident must happen in the course of his employment. If it is an implied term of the contract of employment that the employers shall provide the workman with conveyance to and from his home, an accident during such conveyance is an accident in the course of his employment.—*CREMIN v. GUEST, KEEN & NETTLEFOLD, C.A.*, 146; 1908, 1 K. B. 469.

8. *Workmen's compensation—Disease—Personal injury by accident—Heat stroke.*—Williamson, while employed as a coal trimmer on a liner, was struck down by heat stroke, and died shortly afterwards from heart exhaustion. His widow claimed compensation under the Workmen's Compensation Act, 1906.

Held, dismissing an appeal by the employers, by Lord Loreburn, C., and Lord Ashbourne, Lord Macnaghten dissenting, that the widow was entitled to compensation.

Per Lord Ashbourne: Although a heat stroke may be called a disease, it is in this case, in my opinion, a disease directly caused by an accident arising out of or in the course of an employment, particularly dangerous to Williamson in consequence of his weak state of health. Its not being scheduled as an industrial disease in the Act, 1906, does not affect the question, for the Act expressly provides that "nothing shall affect the rights of a workman to recover compensation in respect of a disease to which the section does not apply, if the disease is a personal injury by accident within the meaning of the Act." I do not at all say that all diseases arising out of or in the course of employment should be regarded as a personal injury by accident, but I am of opinion that under the circumstances of this case and its facts Williamson was killed by a personal injury by accident, and that the appellants are accordingly liable.—*ISMAY, IMRIE & CO. v. WILLIAMSON, H.L.*, 713.

9. *Workmen's compensation—Earnings—Tips—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), Schedule, clauses 1 and 2.*—Where employment is of such a nature that the habitual giving and receiving of tips is open and notorious, and sanctioned by the employer, in calculating the compensation payable under clauses 1 and 2 of the Schedule to the Workmen's Compensation Act, 1906, money thus received by the workman ought to be taken into consideration as part of his weekly earnings.—*PENN v. SPIERS & POND, C.A.*, 280; 1908, 1 K. B. 766.

10. *Workmen's compensation—Employment of casual nature—Washerwoman—Workman—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), ss. 1, 13, First Schedule, clause 1 (2) (b).*—A washerwoman who attends regularly, without instructions, at a house to perform her work is engaged under a contract of service within section 13 of the Workmen's Compensation Act, 1906, and her employment is not of a casual nature.—*DEWHURST v. MATHER, C.A.*, 681.

11. *Workmen's compensation—Employment of casual nature—Window cleaner—Continuity of employment—Death caused by accident—Compensation—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), ss. 1, 13.*—A workman who is called in from time to time by a householder to do work otherwise than for the purposes of the employer's trade or business, there being no contract for permanent or periodic employment, is a person whose employment is of a casual nature within section 13 of the Workmen's Compensation Act, 1906, and

cannot consequently claim the benefit of that Act notwithstanding that his employment may have been at such regular intervals as to give rise to a well-founded expectation of employment.—HILL v. BEGO, C.A., 581.

12. *Workmen's compensation—Industrial disease—Sequelæ of industrial disease—Death caused by sequelæ of industrial disease—Proof that sequelæ arose from industrial disease—Workmen's Compensation Act, 1906 (6 Ed. 7, c. 58), s. 8, Third Schedule.*—If a workman dies from a disease which is a sequelæ of any of the industrial diseases specified in the Third Schedule to the Workmen's Compensation Act, 1906, the burden of proof lies on his representatives to show that the industrial disease was the ultimate or proximate cause of death, not on the employers to show that the sequelæ did not result from the industrial disease.—HAYLETT v. VIGOR & Co., C.A., 741.

METROPOLIS.—See Landlord and Tenant, Local Government, London.

MILL.—See Land Drainage.

MINES.—See Highway, Lease, Railway, Waterworks.

#### MISREPRESENTATION:—

*Vendor of pictures—Innocent misrepresentation by auctioneer—Executed contract—Pictures returned by purchaser and cheque stopped—Action on cheque.*—Held, the auctioneer was entitled to sue on a cheque given by the purchaser of certain pictures, which had been falsely "attributed to" several well-known artists in the catalogue, as the catalogue had been prepared on the instructions of the vendor, and the misrepresentations made by the auctioneer were made in good faith by him, because the return of the pictures and the stopping of the cheque by the purchaser did not put the parties in the same position as they were in before the sale.

*Seddon and the London Salt Co. v. North-Eastern Salt Co.* (1905, 1 Ch. 326) followed.—HINDLE v. BROWN, K.B.D., 133.

See also Deed, Insurance.

#### MONEY-LENDER:—

*Non-registration—Illegal and void transaction—Declaration—Ancillary relief—Terms—Repayment of money borrowed.*—In an action by a borrower against a money-lender for a declaration that a money-lending transaction is illegal and void on account of the non-registration of the money-lender under the Money-lenders Act, 1900, the borrower is entitled to a declaration without asking for ancillary relief, and without being put upon terms as to repayment of the money actually received by him.

Quare, whether the borrower can waive the statute and ratify the transaction.

*Lodge v. National Union Investment Co.* (1907, 1 Ch. 300) distinguished.—CHAPMAN v. MICHAELSON, Eve, J., 661.

See also Bankruptcy, Practice.

#### MORTGAGE:—

1. *Company—Debenture stock—Trust deed—Sale of mortgaged property—Purchase of other property—“Charge created by the company”—Registration—Companies Act, 1900 (63 & 64 Vict. c. 48), s. 14 (1).*—A trust deed executed by a company in 1896 for the purpose of securing an issue of debenture stock contained provisions enabling the trustees, upon the application of the company, to sell any part of the mortgaged property, consisting of freeholds and leaseholds. The proceeds of sale were to become part of the mortgaged property and were to be applied by the trustees, at the request of the company, in the purchase of other freehold or leasehold hereditaments, which were to be assured to the trustees and held by them upon the trusts and for the purposes of the trust deed as part of the mortgaged property. Certain of the mortgaged property was sold, and part of such proceeds of sale were applied in the purchase of freeholds, which were conveyed in 1907 to the trustees in accordance with the provisions of the trust deed, the company not being a party to the conveyance.

Held, that this conveyance was not a "charge created by the company," and therefore did not require registration under the Companies Act, 1900, s. 14 (1).

*Obiter dicta in Cornbrook Brewery Co. (Limited) v. Law Debenture Corporation (Limited)* (1903, 2 Ch. 527; and on appeal, 1904, 1 Ch. 103) adopted.—BRISTOL UNITED BREWERIES (LIMITED) v. ABBOT, Parker, J., 59; 1908, 1 Ch. 279.

2. *Payment out of court to mortgagor—Real estate subject to discretionary trust for conversion—Rents and profits of unconverted real estate—Statutes of Limitation—Extinction of mortgagee's title—Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 34—Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 8.*—The principle that a fund will be paid out of court to a mortgagor only on the terms of his doing equity by paying to a mortgagee all that is due to him under a mortgage on which he can no longer sue, by reason of the Statutes of Limitation having barred the right of action, does not

apply to a case where the mortgagees' title has become extinguished under section 34 of the Real Property Limitation Act, 1833.—HAZELDINE'S TRUSTS, RE, C.A., 29; 1908, 1 Ch. 34.

3. *Priority—Charge on property for legacy—Mortgage by residuary legatee—Constructive notice of charge.*—The testator, who died in 1885, by his will left all his property to his four sons by his first wife, subject to a charge for a legacy in favour of his four sons by his second wife. The legacy remained unpaid. To secure advances the four elder sons in 1890 deposited the title deeds of part of the property with a bank, and in 1899 they executed a formal mortgage of the property to the bank.

Held, that as the bank, if they had made an investigation of title, would have become aware of the charge created by the will, the claim of the four younger sons must prevail over the mortgage to the bank, as there was no suggestion that there had been any concealment of the fact by the mortgagors.—BANK OF BOMBAY v. SULEMAN SOMJI, P.C., 727.

4. *Receipt clause—Evidence of payment—Estoppel—Mortgage of equitable interest by client to solicitor—Sub-mortgage.*—A client executed in favour of his solicitor a mortgage which contained the usual receipt clause, but no money was in fact ever advanced by the solicitor to the client. The solicitor subsequently executed a sub-mortgage in favour of a third party.

Held, that the original mortgagee was estopped by the receipt, as against the sub-mortgagor, from denying that he had received the advance.—POWELL v. BROWNE, C.A., 42.

See also Bankruptcy, Deed, Fixtures, Heriot, Receiver.

#### NAME:—

*Nom de plume—Newspaper proprietor and contributor—Author—Right of contributor to the pseudonym invented by him for the purpose of his contributions—Master and servant—Wrongful dismissal—Engagement requiring notice to determine—Contributor or departmental editor.*—G. L. invented a *nom de plume* by which her contributions to a newspaper were signed and known. The name was also used by her on cards or certificates of membership of a league instituted by her for the purposes of the same paper.

Held, that as against the proprietor of the paper G. L. was entitled to the exclusive right to print, publish, and use her *nom de plume* after her connection with the publication had ceased.

G. L. was engaged by the proprietor to contribute articles to and to perform certain editorial and managerial services in connection with supplement of his paper. At a subsequent interview the remuneration for the whole of the services was agreed to be a fixed price by column of contributions.

Held, that the agreement contained an implied term that notice to determine it should be given.—LANDA v. GREENBERG, Eve, J., 354.

#### NUISANCE:—

*User of land—Non-natural user—Laying creosoted wood in road—Injury to adjoining land—Statutory authority—Bristol Tramways Act, 1894 (57 & 58 Vict. c. clv.), s. 8.*—By section 8 of the Bristol Tramways Act, 1894, the tramway company "shall pave with wood or (by mutual agreement) with other suitable material to the satisfaction of the corporation" certain portions of specified roads. The company paved one of the roads with wooden blocks coated with creosote, and in consequence thereof certain noxious dust or vapour escaped from the creosote and caused damage to the plaintiff's market garden which adjoined the road. At the time there were two methods of wood paving in general use, one with hard wood, and the other with a softer wood hardened with creosote.

Held, that the laying of creosoted wood was a non-natural user of the land, and that the company were liable for the damage caused by the escape of the noxious matter; and that the company were not protected by their Act.

Judgment of the Divisional Court (*ante*, p. 264) affirmed.—WEST v. BRISTOL TRAMWAYS CO., C.A., 393; 1908, 2 K. B. 14.

See also Criminal Law.

#### PARTNERSHIP:—

*Articles—Construction—Professional misconduct—Dentist—Evidence—Order of General Medical Council erasing name from dentists' register—Dentists Act, 1878 (41 & 42 Vict. c. 33), ss. 13, 14, 15.*—Under articles of partnership the plaintiff and the defendant, who were dentists, were entitled to terminate the partnership if either were guilty of professional misconduct or of any act which was calculated to bring discredit upon or injure the other partner or the partnership business. The plaintiff was found by the General Medical Council to have committed an act of professional misconduct, and that body made an order that his name should be erased from the register of dentists. Without deciding whether the order of the council was admissible as conclusive evidence of professional misconduct in every case,

The House affirmed the decision of the Court of Appeal (1907, 2 Ch. 237) that the removal of the appellant's name from the register rendered him incapable of taking part in the partnership business, and entitled the respondent to terminate the partnership.—*CLIFFORD v. TIMMS, H.L.*, 92; 1908, A. C. 12.

See also Bankruptcy, Will.

**PATENT:**—

*Infringement—Judgment for injunction and inquiry as to damages—Subsequent revocation of patent—Right to damages.*—The plaintiff brought an action for infringement of a patent, and obtained judgment for an injunction and an inquiry as to damages. During the inquiry the defendants petitioned for revocation of the patent upon the ground of prior user, of which they were ignorant at the date of the trial, and upon that petition the patent was revoked. The inquiry as to damages having proceeded,

Held, that the defendants were estopped from denying the validity of the patent at the time of the judgment, and that the plaintiff was therefore entitled to damages.—*FOULTON v. ADJUSTABLE COVER AND BOILER BLOCK CO., C.A.*, 639.

**PAUPER.**—See Practice.

**POLICE:**—

*Pension—Appeal to quarter sessions—Special case for High Court—Enactment that order of quarter sessions shall be final—Police Act, 1890 (53 & 54 Vict. c. 45), s. 11.*—The court has no jurisdiction to entertain a special case stated by quarter sessions on the appeal to them with regard to a police constable's pension under section 11 of the Police Act, 1890, since by the provision of that section the order of quarter sessions is final.

Decision of Court of Appeal (51 SOLICITORS' JOURNAL, 590; 1907, 2 K. B. 591) reversed.

*Westminster City Council v. Gordon Hotels* (1907, 1 K. B. 910) followed.—*KYDD v. LIVERPOOL WATCH COMMITTEE, H.L.*, 639; 1908, A. C. 327.

**POOR LAW:**—

*Settlement—Division of parish—Destruction of settlements—Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61)—Poor Law Act, 1879 (42 & 43 Vict. c. 54)—Local Government Act, 1894 (56 & 57 Vict. c. 73).*—Where by an order of the Local Government Board, made under the Divided Parishes and Poor Law Amendment Act, 1876, a parish is either amalgamated with another parish or is divided into two or more parishes, settlements are not thereby affected.

*Reg. v. Inhabitants of Tipton* (1842, 3 Q. B. 215, 11 L. J. M. C. 89) overruled.

The principle laid down in *West Ham v. London County Council* (1904, A. C. 40, 73 L. J. K. B. 85) held to apply equally whether the original parish has by the order been added to and enlarged, or divided into two or more parishes.—*WEST HAM UNION v. EDMONTON UNION, H.L.*, 75; 1908, A. C. 1.

See also Rating.

**POWER:**—

*1. Appointment—By writing or writings—Execution—Document invalid as a will—Wills Act, 1837 (7 Will. 4 & 1 Vict. c. 26), s. 10.*—Under an indenture of settlement, dated the 20th of September, 1838, A. had a power of appointment at any time or times during her life by any deed or deeds, writing or writings, with or without power of revocation, to be duly executed in the presence of two or more credible witnesses. On the 25th of August, 1846, A. signed a document in the presence of two credible witnesses which purported to be her will, and by which she purported to deal with the subject of the settlement. This document was not admitted to probate, having been executed with insufficient formalities.

Held, that the document was not a valid execution of the power.

*Re Broad* (1901, 2 Ch. 86) discussed.—*BARNETT, RE, DAWES v. IXER, Warrington, J.*, 224; 1908, 1 Ch. 402.

*2. Appointment—Defective execution—“Will or codicil to be attested by two witnesses”—Unattested Scotch holograph codicil—Testamentary instrument—Personal property—Equitable aid—Wills Act, 1837 (1 Vict. c. 26), s. 10—Lord Kingsdown's Act (24 & 25 Vict. c. 114).*—Mrs. H., domiciled in Scotland, was the donee of a power of appointment in favour of such of her children as she should by her last will and testament in writing, or any codicil or codicils thereto, to be signed in the presence of and attested by two or more witnesses, appoint. By a will duly executed according to English law she appointed among three of her children. By a subsequent codicil in holograph form, but unattested, she altered the appointment by the will so as to include other children. The will and codicil were proved in England.

Held, that the codicil was a good testamentary disposition by Scotch law, that the appointment by the will was not expressly revoked, and that in the circumstances the defective execution of

the power would be aided by the court.—*WALKER, RE, McCOLL v. BRUCE, Joyer, J.*, 280; 1908, 1 Ch. 560.

See also Appointment, Settlement.

**PRACTICE:**—

*1. Consent order—Facts not known to counsel but known to client—Withdrawal of consent.*—On a motion for a receiver of the assets of a business, an order by which moneys standing to the account of A. at a certain bank should be handed to the receiver was agreed to by counsel for the defendants. There was also at the bank in the name of A. a deposit account which did not form part of the assets of the business. The defendants afterwards withdrew their consent, on the ground that counsel was not aware of this deposit account at the hearing of the motion.

Held, that this was an “arbitrary” withdrawal of consent which the court would not allow.—*WEDGE v. PANTER, Warrington, J.*, 241.

*2. Discovery—Joint plaintiffs—Refusal by one plaintiff to make affidavit of documents—Application by co-plaintiff to attach—Jurisdiction—R. S. O. XXXI. 21.*—A partnership between two solicitors having been dissolved, one of the partners, without the consent or authority of the other, brought an action in the firm name to recover the amount of a bill of costs alleged to be due from a client of the firm. The defence was that by an arrangement with the other partner the defendant was not liable for the costs. The non-attending partner applied to stay the action upon the ground that it was brought without his authority, and an order was made in effect refusing the stay upon the partner who was conducting the action indemnifying the other partner against the costs of the action, and this indemnity was given. An order was made that the plaintiffs should make an affidavit of documents, and this order was served on the partner conducting the action, who was acting as the solicitor in the matter, and he served a copy of it on the other partner. The latter did not make an affidavit of documents, and the defendant applied to have the action dismissed for non-compliance with the order. The partner conducting the action thereupon took out a summons to attach the other partner for not obeying the order.

Held, that the judge had jurisdiction in such a case to make an order for attachment.—*SEAL & EDGELOW v. KINGSTON, C.A.*, 532 1908, 2 K. B. 579.

*3. Discovery—Libel—Plea of justification—Particulars—Inspection of plaintiffs' books.*—In an action of libel by stock and share dealers, the words complained of being that they were “wrong uns,” the defendant pleaded a justification. In his particulars of the plea of justification he stated that the plaintiffs were not members of the London Stock Exchange, but were concerned in running a “bucket-shop”; and that they did not carry on the ordinary and legitimate business of stock brokers, but were entirely dependent for their profits upon the losses of their customers, to whom they pretended to give independent and unbiased advice as to dealings, and he gave the title of and extracts from a number of pamphlets issued by the plaintiffs in support of his allegations. The defendant then applied for inspection of the plaintiffs' books.

Held, that, as the defendant had not given any specific instance in his particulars, he was not entitled to inspection.—*ARNOLD v. BOTTOMLEY, C.A.*, 300; 1908, 2 K. B. 151.

*4. Discovery—Ship's papers—Lloyd's policy against fire—Substance of claim.*—A Lloyd's policy of insurance stated that the plaintiffs, as well in their own names as for and in the names of every other persons to whom the same might appertain, insured certain goods for twelve months against fire in the assured's premises or in the hands of their agents within the United States and Canada, and also against risks of transportation between the United States and the United Kingdom or Continent of Europe. The policy was made out on a form of a Lloyd's marine policy. The plaintiffs sued for a loss of the goods by fire in the United States, and an order was made at chambers for an affidavit by the plaintiffs of ship's papers.

Held, that discovery of ship's papers was limited to marine insurance; that the substance of the claim must be looked at to see if such discovery ought to be allowed; and that therefore the order for discovery of ship's papers should not have been made.—*TANNENBAUM & CO. v. HEATH, C.A.*, 375; 1908, 1 K. B. 1032.

*5. Enforcing order—Order for payment of costs in divorce suit—Action upon order—R. S. C. XLII. 24; LXVIII. 1.*—The effect of ord. 68, r. 1, coupled with ord. 42, r. 24, is that an action cannot be maintained in the High Court to enforce an order made by a judge of the Divorce Division, though this does not apply to an order made by a judge of that division in Probate.—*IVIMEY v. IVIMEY, C.A.*, 482; 1908, 2 K. B. 260.

*6. Judgment—Setting aside—Error arising from accidental slip—R. S. C. XXVIII. 11.*—The defendant having made default in entering an appearance to a specially indorsed writ issued out of the Leeds District Registry, the plaintiff signed final judgment

for the amount claimed and £5 6s. for costs. In these default cases the practice masters had laid down a scale of fixed costs which would be allowed instead of having the costs in each case taxed, according as the writ was served within or beyond a certain distance from the General Post Office. These fixed costs were adopted in the Leeds District Registry, and a list of them was posted up in the office. The clerk to the plaintiff's solicitors in filling in the form of judgment at the registry office inadvertently copied the wrong figure for costs, making the judgment 12s. more than the plaintiff was entitled to. The clerk affixed the seal of the court to the judgment. The plaintiff having issued execution the defendant applied to have the judgment set aside, upon the ground that it was bad as it had been entered for an amount in excess of that which was due. The plaintiff then applied to amend it. The district registrar and the judge having refused to set the judgment aside, and having amended it,

Held (by Gorell Barnes, P., and Farwell, L.J., Fletcher Moulton, L.J., dissenting), that there had been an error, arising from an accidental slip, within the meaning of ord. 28, r. 11, and that the court had power and ought to amend the judgment.—ARMITAGE v. PARSONS, C.A., 515; 1908, 2 K. B. 410.

7. *Motion to reinstate action for hearing—Absence of defendant—Re-trial of issues involving moral responsibility only without affecting legal liability.*—A case properly heard and tried will not be reinstated for trial where the party applying could have attended at the hearing, and only seeks to clear himself from blame without disputing any legal liability.—WILSON v. STEVENS, *Joyce, J.*, 282.

8. *New trial—Time for serving notice—Special findings of jury—Judgment postponed—R. S. C. XXXIX. 4.*—Where at the trial of an action the jury answered certain questions in favour of the plaintiff, and the judge referred the question to a referee to report, and upon his report entered judgment for the plaintiff for the amount so found due, held that the time for applying for a new trial ran from the findings of the jury, and not from the judgment of the judge.—GREENE v. CROOME, C.A., 76; 1908, 1 K. B. 277.

9. *Originating summons—Jurisdiction—Covenant to pay annuity—Evidence of continuance of life of annuitant—R. S. C. LIVa.*—The Court has no jurisdiction on an originating summons, under order 54a, to declare what evidence ought to be furnished to a person who has covenanted by deed to pay an annuity, is entitled to have produced as to the continuance of the life of the annuitant.—HUNT v. MAW, C.A., 58.

10. *Pauper—Inalienable pension—“Worth £25”—R. S. C. XVI. 22.*—A litigant entitled to a pension of £70 a year, but who could not alienate or raise money on his pension, which he swore was inadequate to provide the necessities of life for himself and his wife, was held not to have given sufficient proof that he was not worth £25 within ord. 16, r. 22.—KYDD v. LIVERPOOL WATCH COMMITTEE, C.A., 223.

11. *Remitting action—“Action of tort”—County Courts Act, 1888 (51 & 52 Vict. c. 43), s. 66.*—A statement of claim alleged that the plaintiff was suffering from toothache, and employed the defendant, for reward as a dentist, to extract the tooth by his painless process, and the defendant, or his operator, extracted the tooth so unskillfully that broken portions thereof were left in the jaw, whereby illness, pain, and suffering were caused to the plaintiff.

Held, that this was an “action of tort” within the meaning of section 69 of the County Courts Act, 1888, and could be remitted to the county court under that section.—EDWARDS v. MALLAN, C.A., 316; 1908, 1 K. B. 1002.

12. *Service out of jurisdiction—Admiralty—Collision in foreign waters—Undertaking for bail abroad—R. S. C. XI. 1 (g).*—Where a collision occurred in foreign waters between two British ships and a foreign ship, and one of the British ships and the foreign ship gave undertakings for bail abroad and subsequently the British ship sued the other British ship and the foreign ship in England, and applied for leave to serve notice of the writ on the foreign ship out of the jurisdiction under ord. 11, r. 1 (g).

Held, that the facts that undertakings for bail were given abroad, and that the foreign ship within a reasonable time commenced an action against the British ship abroad, were circumstances to be taken into account in considering whether leave should be given. The court in the circumstances refused leave.—HAGEN, THE, C.A., 335; 1908, P. 189.

13. *Service out of jurisdiction—C.I.F. contract—Contract “to be performed within the jurisdiction”—R. S. C. XI. 1 (e).*—The defendant, a merchant at Hamburg, agreed to sell to the plaintiffs, merchants in England, goods c.i.f., Tyne, net cash against bill of lading. The goods were shipped on board a steamer at Hamburg for the Tyne, and the price was paid against the bill of lading. Upon arrival the plaintiffs inspected the goods and alleged that

they were not according to contract quality. They obtained leave, under ord. 11, r. 1 (e), to issue a writ for service out of the jurisdiction, and to serve notice thereof upon the defendant at Hamburg, claiming for breach of contract. Upon an application by the defendant to set aside the order giving leave,

Held, that the breach occurred at Hamburg and not in England, and that therefore the order must be set aside.

BARRON v. MYERS (4 Times L. R. 441) dissented from.—CROZIER, STEPHENS & CO. v. AUREBACH, C.A., 335; 1908, 2 K. B. 161.

14. *Service of writ out of jurisdiction—Conditional appearance—Application to set aside service—Time for—R. S. C. XII. 30.*—The defendant, upon whom a writ was served out of the jurisdiction, entered a conditional appearance, the memorandum of appearance stating that the appearance was to stand as unconditional unless the defendant applied within ten days to set aside the writ or service thereof and obtain an order to that effect. The defendant took out a summons within the ten days to set aside the service, but the summons was not returnable until after the expiration of the ten days.

Held, that the application was made in time.—BONNELL v. PRESTON, C.A., 621.

15. *Summary judgment—Action by money-lender—Harsh and unconscionable transaction—R. S. C. XIV.—Money-lenders Act, 1900 (63 & 64 Vict. c. 51), s. 1.*—Where a defendant under order 14 sets up a claim to relief under the Money-lenders Act, 1900, the proper order to be made under order 14 is one which gives the plaintiff judgment for any portion remaining due of the total money actually lent by the plaintiff to the defendant without interest, and gives the defendant leave to defend as to the residue of the claim.—LAZARUS v. SMITH, C.A., 481; 1908, 2 K. B. 266.

16. *Third-party notice—Leave to serve—Difference in practice of the Chancery and King's Bench Divisions of the High Court—Service of notice of the application on the plaintiff—Ex parte application—R. S. C. XVI. 48 and 52.*—Upon an application for leave to serve a third-party notice there is no rule in the Chancery Division requiring the defendant to serve the plaintiff with notice of the application, which should be made *ex parte*. The court may require the order to be served on the plaintiff. The plaintiff can appear upon the summons for directions under ord. 16, r. 52, and is then entitled to be heard.

WYE VALLEY RAILWAY CO. v. HOWES (16 Ch. D. 489) explained.—FURNESS & CO. v. PICKERING, *Joyce, J.*, 551.

17. *Undertaking—Breach of—Enforcing undertaking—Corporation—Sequestration—R. S. C. XLII. 31.*—Ord. 42, r. 31, of the Rules of the Supreme Court is not intended to alter the practice of the court as it existed before the promulgation of the rules, and therefore an undertaking is equivalent to an order for the purposes of that rule, and can be enforced against a corporation by sequestration.—MILBURN v. NEWTON COLLIERY, WARRINGTON, *J.*, 317.

See also Appeal, Charging Order, Costs.

PRESCRIPTION.—See Easement, Fishery, Light.

PROBATE.

1. *Administration—Limited grant in France—General grant in England—Court of Probate Act, 1847 (20 & 21 Vict. c. 77), s. 73.*—A general grant of administration of estate in this country may be given to a foreign administrator who has a limited grant over the foreign estate of the same person.—LEVY (OTHERWISE BENOIST), IN THE GOODS OF, P.D., 193; 1908, P. 108.

2. *Administration—Motion for the appointment of receiver and administrator pendent lite—Citing heir-at-law.*—Application for the appointment of receiver and administrator of an estate *pendente lite* granted, although the heir-at-law had not been cited, the administration of the estate being urgent and the motion unopposed.—MESSITER-TERRY, IN THE GOODS OF, P.D., 379.

3. *Attesting witnesses—Cross-examination—Practice.*—Attesting witnesses to a will or codicil may be cross-examined by the party calling them, as they are the witnesses of the court.—BROCK, RE, P.D., 699.

4. *Bona vacantia—Right of Crown.*—A soldier died in India, a bachelor, bastard, and intestate, leaving personal estate in this country.

Held, that the Crown was entitled to the estate as *bona vacantia*, the right claimed not being in the nature of a succession.—BELL, IN THE ESTATE OF, P.D., 600.

5. *Destroyed will—Error of executrix—Admission of draft—Practice.*—Where an executrix destroyed a will in a fit of temper, the court refused on motion to admit a draft of the original will to probate. It must be propounded in an action.—CARTER, IN THE ESTATE OF, P.D., 600.

6. *Incorporation of unattested paper—Existing and future documents—Principles of admission.*—A reference in a duly executed testa-

mentary document to "any memorandum written or signed" by the testator is really a reference to any existing or future document, and is too vague a description to allow of the incorporation in the will of a document actually existing at the date of the will, nor in such circumstances is parol evidence as to the identity of the document admissible.—UNIVERSITY COLLEGE OF NORTH WALES v. TAYLOR, C.A., 44; 1908, P. 140.

7. *Retraction of renunciation—Probate rules—Practice.*—Where the chain of executorship has been broken, the court may allow an executor who has renounced to take a grant in a different capacity.—RAYNER, IN THE GOODS OF, P.D., 226.

8. *Will—Acknowledgment by testator of signature—Wills Act, 1837 (1 Vict. c. 26), s. 9.*—The provisions of section 6 of the Wills Act, 1837, which provides that it is necessary that a will "shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction," must be strictly complied with.—REEVES v. GRAINGER, P.D., 355.

9. *Will—British subject—Scots law—Wills Act, 1837 (1 Vict. c. 26)—Lord Kingsdown's Act, 1861 (24 & 25 Vict. c. 114).*—Where a domiciled Englishwoman, while temporarily residing in Scotland, executed a valid will in Scots form, probate of it was granted in England.—BATHO, IN THE GOODS OF, P.D., 318.

10. *Will—Separate sheets—Attachment—Wills Act, 1837 (1 Vict. c. 26)—Wills Act Amendment Act, 1852 (15 Vict. c. 24).*—Where a testator who had written his will on one half sheet of paper and his signature on a second half sheet, pointed to his signature holding both pieces of paper together while the two attesting witnesses signed their names on the first half sheet.

Held, that the will conformed to the provisions of the Wills Act Amendment Act, 1852 (15 Vict. c. 24).—LEWIS v. LEWIS, P.D., 31; 1908, P. 1.

11. *Wrong codicil signed—Refusal to rectify—Practice.*—A testatrix in error signed her sister's codicil instead of her own.

The Court refused to admit the document to probate by striking out the name of the sister.—MEYER, IN THE GOODS OF, P.D., 716.

See also Executors.

#### PUBLIC HEALTH :—

*Sewers—Compensation—Sewer laid through claimant's land—Injury to claimant's land by pumping station connected with sewer, but erected on land not taken from the claimant—"Full" compensation—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 16, 27, 308.*—Where a sewer is laid through the property of a landowner under the powers of the Public Health Act, 1875, and works connected with the sewer are constructed on adjacent lands acquired by the local authority from persons other than the landowner, he is not entitled to compensation in respect of depreciation in the value of his land arising from the works constructed on the adjacent land, and it makes no difference that such works were connected with the sewers laid through the claimant's land so as to form one system of sewerage.—HORTON v. COLWYN BAY DISTRICT COUNCIL, C.A., 158; 1908, 1 K. B. 327.

See also Landlord and Tenant, Local Government, London, Sewers.

#### RAILWAY :—

1. *Carriage of animal—Condition limiting liability—"Just and reasonable"—Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 7.*—The plaintiff consigned a dog valued at £300 for carriage by the defendants' railway, and the dog, while in their custody, was killed owing to their negligence. The consignment note contained a condition limiting the defendants' liability to £2, unless a higher value was declared at the time of delivery to the company, and a sum equal to  $1\frac{1}{2}$  per cent. paid upon the excess of the value so declared. No declaration was made as to the dog's value. The defendants gave evidence that this special rate had been charged for several years by all railway companies, and that the carriage of dogs involved extra risk.

Held, that the condition was "just and reasonable" within the meaning of section 7 of the Railway and Canal Traffic Act, 1854, and the defendants were not liable beyond the £2.

Judgment of Walton, J. (51 SOLICITORS' JOURNAL, 191; 12 Com. Cas. 158) reversed.—WILLIAMS v. MIDLAND RAILWAY, C.A., 113; 1908, 1 K. B. 252.

2. *"Pool"—Working agreement or amalgamation—Objection by other railways—Preliminary objection that the scheme was ultra vires—Necessary sanction of railway commissioners—Costs of objectors.*—The Great Northern and the Great Central Railways entered into an agreement in 1907 to "pool" their interests. The agreement was for 999 years. The Midland Railway Co. and twenty-six other parties objected, on the ground, *inter alia*, that the agreement was not a mere working agreement, but was in fact an amalgamation of the

two companies, and that as an Act of Parliament could alone sanction an amalgamation, the Railway Commissioners had no jurisdiction to approve the agreement, which on various other grounds they submitted was *ultra vires*.

Held, that the agreement was a working agreement and not an amalgamation, but that it was for a period which was not authorized by the Great Northern and Manchester, Sheffield, and Lincoln Act of 1858, and was in reference to matters which were not in contemplation when that Act was passed. It was therefore *ultra vires*, and the objections to it must be upheld.—GREAT NORTHERN RAILWAY AND GREAT CENTRAL RAILWAY, RE, Rly. Com., 318.

3. *Purchase of land—Minerals—China clay—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77, 78.*—China clay is a "mineral" excepted out of the conveyance to a railway company under section 77 of the Railway Clauses Consolidation Act, 1845.—GREAT WESTERN RAILWAY v. CARPALLA UNITED CHINA CLAY CO., Eve, J., 683.

4. *Rates—Rebate—Cartage—Undue preference.*—In assessing a rebate off a rate for the carriage of goods in respect of the cartage having been performed by the trader, the correct basis is to take the cost of the service rendered and the saving that accrued to the company thereby.—PICKFORDS v. LONDON AND NORTH-WESTERN RAILWAY CO., C.A., 113.

5. *Trader—Voluntary services—Charge—Reasonableness of charge—Railway Rates and Charges Orders.*—The Railway Rates and Charges Orders form a complete code of maximum rates with regard to merchandise traffic which governs all service within the scope of a railway company's undertaking, whether such services are obligatory or not.—MIDLAND RAILWAY CO. v. MYERS, ROSE & CO., C.A., 377; 1908, 2 K. B. 356.

See also Rating.

#### RATING :—

1. *General district rate—Partial exemption—Railways—Light railway in the nature of tramway—Land used only as a railway—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-section 1 (b)—Light Railways Act, 1896 (59 & 60 Vict. c. 48), s. 12.*—The partial exemption from general district rate conferred by section 211 (1) (b) of the Public Health Act, 1875, on the occupiers of land used only as a railway constructed under any Act of Parliament for public conveyance, extends to any light railway laid in public streets which is not distinguishable in other respects from an ordinary electric tramway constructed through the streets of a town under an order made pursuant to the Light Railways Act, 1896; section 211 of the Public Health Act, 1875, falling within the description of "the general enactments relating to railways" contained in section 12 (2) of the Light Railways Act, 1896, and lines of rails laid on a public highway in respect of which the light railway company is rated, constituting land used only as a railway for the purpose of such reduced assessment.—WAKEFIELD LIGHT RAILWAY v. WAKEFIELD CORPORATION, H.L., 497; 1908, A. C. 293.

2. *Poor rate—Licensed premises—Money payable to compensation fund—Deduction—Parochial Assessments Act, 1836 (6 & 7 Vict. c. 96), s. 1—Licensing Act, 1904 (4 Ed. 7, c. 23), s. 3.*—In assessing licensed premises to the poor rate, the annual sum payable by the licence-holder to the compensation fund under section 3 of the Licensing Act, 1904, cannot be deducted from the gross value under section 1 of the Parochial Assessments Act, 1836.

Judgment of the Divisional Court (51 SOLICITORS' JOURNAL, 14; 1906, 2 K. B. 899) affirmed.—WADDLE v. SUNDERLAND UNION, C.A., 223; 1908, 1 K. B. 642.

3. *Poor rate—Valuation—Sewage farm.*—Certain lands which had been acquired by a sewage board, and on which the board had constructed works for distributing the sewage on the land, was let to a farming tenant at a rent of £490 a year, the tenant covenanting to receive and dispose of the sewage delivered on the land by the board, so as to satisfy their statutory obligations.

Held, dismissing the appeal of the sewerage board, that in valuing the sewage farm (including the works in question) for rating purposes, the sewage board must be regarded as possible hypothetical tenants, and therefore that the annual value of the advantages accruing to them (over and above the rent of a farm) in respect of the facilities afforded the board by the user of the farm as a sewage farm for the performance of their statutory duties, ought to be taken into consideration.

Decision of the Court of Appeal (51 SOLICITORS' JOURNAL, 208; 1907, 1 K. B. 630) affirmed.—DAVIES v. SEISDON UNION, H.L., 532; 1908, A. C. 315.

4. *Rateable value—"Land covered with water"—Floating pontoons used in connection with shipbuilding yard—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211 (1) (b).*—The occupiers of a ship-

building and repairing yard on the banks of a tidal river excavated certain land next the river, so that the water flowed over the land at all states of the tide, and erected piles on the ground to which were attached floating pontoons, which rose and fell with the tide. The pontoons were used for taking ships which required painting or repairing. The pontoons were always afloat.

Held, that the land over which the pontoons floated was "land covered with water" within the meaning of section 211 (1) (b) of the Public Health Act, 1875, and that the occupiers thereof were only rateable at one-fourth part of the net annual value thereof.

Judgment of the Divisional Court (1908, 1 K. B. 315) affirmed.—SMITH'S DOCK CO. v. TYNEMOUTH CORPORATION, C.A., 376; 1908, 1 K. B. 948.

#### RECEIVER :—

*Action—Sale by mortgagee—Purchase by receiver without leave of court.*—A receiver of the court is absolutely barred from purchasing the property of which he is receiver without the leave of the court, and the court will not consider whether, in the special circumstances of any particular case, there is no probability of there being anything wrong or not.—NUGENT v. NUGENT, C.A., 262; 1908, 1 Ch. 546.

#### RESTRAINT OF TRADE :—

1. *Covenant—Breach—Agreement not to "be concerned or interested in" a similar business—Employment as paid servant.*—In construing a covenant in restraint of trade the circumstances and the business meaning of the words used must be regarded, and where the covenantor, the manager of the business sold, covenanted not to "be concerned or interested in" a similar business, held, a breach of such covenant to become the manager of a rival business in the same street.—CAVENDISH v. TARREY, Eve, J., 726.

2. *Reporter to newspaper—Restricted area—Unrestricted time—Validity—Reasonableness—Public policy—Infancy.*—A junior reporter, under the age of twenty-one, on joining the staff of the plaintiffs' newspaper, agreed that he would not, after leaving the plaintiffs' service, be connected with any newspaper business carried on in the same town or within a radius of twenty miles thereof.

Held, that the agreement was reasonably necessary for the protection of the plaintiffs, and was therefore good.

Held, also, that the restriction being not unreasonable in the case of an adult was not unreasonable in the case of an infant.—SIR W. C. LENG & CO. v. ANDREWS, Eve, J., 714.

See also Master and Servant.

#### RESTRICTIVE COVENANT :—

*Covenant not to use building on land for place of business—Stables for coal merchant's business.*—An owner of a plot of land bound by covenant not to "use or suffer to be used any building which might be erected upon any part or parts of the said plot of land as a hotel, tavern, public-house, beerhouse, shop, warehouse, or manufacturing dyehouse, chandler's shop, or other place of business," erected stables thereon, which he intended to use for horses employed in his business as a retail coal merchant.

The Court granted an *interim* injunction against him in the terms of the covenant.—WHITE v. POLLARD, Eve, J., 748.

#### REVENUE :—

1. *Estate duty—Foreign bonds to bearer—Bonds situate in United Kingdom—Finance Act, 1894 (57 & 58 Vict. c. 30), ss. 1, 2, (2).*—Estate duty is payable in respect of foreign bonds payable to bearer which are the property of a domiciled foreigner, but are physically situate in England at the time of the owner's death.—WINANS v. THE KING, C.A., 378; 1908, 1 K. B. 1022.

2. *Estate duty—General power of appointment by will—Exercise of power—Property passing to executor as such.*—Property appointed under a general power of appointment by will does not pass to the executor "as such" within the meaning of the Finance Act, 1894, s. 9, sub-section 1, and consequently estate duty is in the absence of any direction to the contrary payable out of the appointed fund, and not out of residue.—HADLEY, RE, Parker, J., 640.

3. *Estate duty—Incidence—General power of appointment—Appointed fund—Residue—No direction to pay testamentary expenses—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 9 (1).*—A testatrix having under the trusts of her marriage settlement a general power of appointment over one-half of the settled funds appointed by a codicil to her will such one-half to her trustees on trust for the benefit of the defendant Orlebar and his children, and gave the ultimate residue of her personal estate to the defendant Molyneux. By another codicil she appointed the plaintiffs her executors and trustees. The will did not contain any directions to pay testamentary expenses. On a summons being taken out to have it determined whether the estate duty payable in respect of

the appointed fund was payable out of that fund or out of the general personal estate of the testatrix.

Held, that the estate duty was payable out of the general personal estate of the testatrix.—ORLEBAR, RE, WYNTER v. ORLEBAR, Neville, J., 29; 1908, 1 Ch. 136.

4. *Income tax—Fire and accident insurance—Balance of profit—Deductions—Unexpired risks.*—A company carrying on the business of fire and accident insurance is not entitled, when ascertaining for income tax purposes its annual profits, to take into account the unexpired risk on policies current at the end of each year under consideration, but the profits must be determined on an account shewing the actual income on the one hand and expenses and losses actually accrued within the year on the other.—GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION v. McGOWAN, H.L., 455; 1908, A. C. 207.

5. *Income tax—Residence—Company registered abroad—Company's business in England and abroad—Income Tax Act, 1853 (16 & 17 Vict. c. 34), s. 2, Schedule D.*—A company whose registered office is abroad, and part of whose business is carried on abroad, may be resident in England for the purposes of assessment to income tax if its business as a whole is controlled from England.—NEW ZEALAND SHIPPING CO. v. STEPHENS, C.A., 113.

6. *Income tax—University College—Public school—Property devoted to charitable purposes—Exemptions—Income Tax Acts, 1842 and 1853, Schedules A, C, D.*—The University College of North Wales derived its income from (1) voluntary donations; (2) devises and bequests; (3) a Government grant; and (4) payments by students. The capital moneys were invested in properties covered by Schedules A, C, and D of the Income Tax Acts, 1842 and 1853. The commissioners claimed to tax the income of the college irrespective of its source.

Held, that a rule nisi for a *mandamus* to the Special Commissioners of Income Tax directing them to allow certain exemptions under Schedules A, C, and D as income derived from property devoted to charitable purposes should be made absolute, with costs.—REX v. INCOME TAX COMMISSIONERS, K.B.D., 395.

7. *Male servant—Business house—Men employed in the serving of meals—"Waiter"—Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), ss. 18, 19.*—By section 18 of the Customs and Inland Revenue Act, 1869, there shall be paid for every male servant 1s. a year. By sub-section 3 of section 19 "the term male servant means and includes any male servant employed either wholly or partially in any of the following capacities—that is to say, cook, house-porter, footman, page, waiter . . . or in any capacity involving the duties of any of the above description of servants by whatever style the person occupying any such capacity may be called." A business house employed men to help in the preparation and serving of meals provided for the indoor staff of assistants. The magistrate held that these men were male servants within the meaning of section 19 of the Act of 1869, and convicted the appellants, who had not complied with section 18 of the Act.

Held, that the decision of the magistrate was wrong, and that the conviction must be quashed.—WHITELEY v. BURNS, K.B.D., 264; 1908, 1 K. B. 705.

8. *Stamp duty—Increase of capital authorized by private Act—Charge of duty on capital of companies with limited liability otherwise than under the Companies Acts—Failure to render statement—Penalties—Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 113—Finance Act, 1899 (62 & 63 Vict. c. 9), s. 7.*—By section 113 of the Stamp Act, 1891, it is provided "(1) that a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or company to the commissioners within one month after the date of the letters patent or the passing of the Act; and in case of any increase of the amount of nominal share capital of any corporation or company, whether now existing or to be hereafter formed, being authorized by any letters patent or Act, a statement of the amount of such increase shall be delivered by the corporation or company to the commissioners within the like period; (2) the statement shall be charged with an *ad valorem* stamp duty of 2s. for every £100 and any fraction of £100 over any multiple of £100 of the amount of such capital or increase of capital, as the case may be, and shall be duly stamped accordingly when the same is delivered to the commissioners; (3) in the case of neglect to deliver such a statement as is hereby required to be delivered, the corporation or company shall be liable to pay to her Majesty a sum equal to £10 per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect shall continue." By section 7 of the Finance Act, 1899, the duty so chargeable was increased to 5s. for every £100.

Held, that there was authorized by certain private Acts of Parliament an increase of £2,400,000 in the nominal share capital of the Great Northern, Piccadilly, and Brompton Railway Co. within

the meaning of the above section, and that the company was consequently liable to penalties for failure to deliver a statement of such increase, as required by that section.—**GREAT NORTHERN, PICCADILLY, AND BROMPTON RAILWAY v. ATTORNEY-GENERAL, H.L.**, 411.

9. *Stamp duty—Sale and conveyance—“Thing done or to be done in any part of the United Kingdom”*—*Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 14, 54.*—A company which was registered in England, and which had a branch business in Paris, by an instrument in writing executed in France and drawn up in French, transferred to a new company, also registered in England, all its business and assets in France, and in consideration thereof the new company issued and allotted to the old company in England 72 000 £1 shares in the new company. The question was, what stamp duty (if any) was that instrument to be stamped with? The commissioners were of opinion that it was a “conveyance on sale,” and under section 14, sub-section 1, and section 54 of the Stamp Act, 1891, should be stamped with an *ad valorem* stamp which would amount to £360. The company appealed. The Court of Appeal (Fletcher Moulton and Farwell, L.J.J., Collins, M.R., dissenting), affirming the judgment of Walton, J., who had reversed the decision of the commissioners, held that the instrument, having been executed abroad and dealing solely with property locally situated out of the United Kingdom, was only chargeable with a sixpenny stamp as an agreement. The Crown appealed.

Held, that the opinion of the commissioners was right, and therefore the appeal of the Crown was allowed with costs.—**INLAND REVENUE COMMISSIONERS v. MAPLE, H.L.**, 92; 1908, A.C. 22.

10. *Stamp—Treasury note of foreign government—Promissory note—Marketable security—Debenture—Stamp Act, 1891 (54 & 55 Vict. c. 39), ss. 1, 4, 33, 82, 122.*—The appellants presented a gold coupon treasury note issued by the United States of Mexico to the Commissioners of Inland Revenue for their opinion, and submitted that the instrument was a “promissory note” and should be stamped as such. The commissioners thought that it was a “marketable security,” and should carry a higher stamp.

Held, that the instrument was capable of being stamped either as a “promissory note” or as a “marketable security.” As the Crown could not require it to be stamped twice, it was competent for the Crown to require that the instrument should be stamped at the higher rate.

Decision of the Court of Appeal (1907, 1 K.B. 246) affirmed.—**SPEYER BROTHERS v. INLAND REVENUE COMMISSIONERS, H.L.**, 222; 1908, A.C. 92.

#### RIVER :

*Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c. 75), s. 7—“Sewers” only sufficient for the requirements of the district—Bacterial purification works.*—Section 7 of the Rivers Pollution Prevention Act, 1876, which deals with the provision by sanitary and local authorities having sewers under their control, of facilities to manufacturers for carrying the liquids from their factories into the sewers, provides, *inter alia*, that no sanitary authority shall be required to give such facilities “where the sewers of such authority are only sufficient for the requirements of their district.”

Held, that the word “sewers” in this proviso means sewers proper, and does not include bacterial purification works into which the sewage flows through the sewers, and whence it is carried by pipes into a river.—**BROOK BROTHERS (LIMITED) v. MELTHAM DISTRICT COUNCIL, K.B.D.**, 482; 1908, 2 K.B. 341.

See also Land Drainage.

#### SALE OF GOODS :

*Contract for sale of cattle on c.i.f. terms—Insurance to be against “all risks”—Policy with clause “warranted free of capture, seizure, and detention”—Cattle not landed in consequence of Government prohibition—Loss.*—The plaintiffs purchased from the defendant on c.i.f. terms certain cattle to be shipped from Buenos Ayres to Durban, the defendant undertaking, by the contract, to insure the cattle against all risks. The defendant delivered to the plaintiff a Lloyd’s policy which had clauses attached headed “All Risks’ Live Stock Clauses,” containing the following: “To cover mortality, jettison, washing overboard, and risks of every kind from time of arrival at wharf and until delivered to consignees, but free of all claims for particular average and depreciation in respect of animals which walk ashore,” &c. The policy contained the clause warranted free of capture, seizure, and detention, and the consequences thereof. During the voyage foot and mouth disease broke out among the cattle, which, in consequence, could not be landed, owing to a Government prohibition, and had to be slaughtered on board. The underwriters refused to pay the loss, and the plaintiffs sued the defendant to recover damages for breach of contract in not having effected a policy against all risks.

Held, that the contract, being one between buyer and seller, in

which the insurance of the cattle against all risks whatever was contemplated, the policy obtained by the defendant, although as between insurance brokers and underwriters one which would be considered an “all risks” policy, did not satisfy the contract, and the defendant was therefore liable to the plaintiffs for loss arising in consequence of the cattle not being allowed to land.

Decision of Channell, J. (1907, 1 K.B. 685, 12 Com. Cas. 196), affirmed.—**YUILL & CO. v. SCOTT-ROBSON, C.A.**, 192; 1908, 1 K.B. 270.

See also Bankruptcy, Execution.

#### SATISFACTION :

*Will—Trust to pay debts—Presumption of satisfaction of debts by legacies—Presumption against double portions—Debt and portions under settlement in respect of one fund—Legacies under a will in respect of another fund—Settlement executed by testator only, but delivered to his solicitor.*—A testator had in 1869 received a sum of £4,000 in right of his second wife. In 1887 he covenanted to pay this sum of £4,000 for the benefit of his said wife and his two children by her. By his will dated 1888 he devised and bequeathed his real and personal estate to trustees upon trust to sell and to pay his debts, and directed that the residue should be equally divided between all his children, subject as to the shares of the children by his second wife to a trust for her benefit during widowhood. He also expressly directed that the children should bring into hotchpot certain benefits received by them in his lifetime. By a codicil dated 1899 the testator directed that the trustees should, out of his moneys, pay the income of £4,000 to his wife, and after her decease that the said sum should fall into his residuary estate; and he thereby confirmed his said will.

Held, that the trust to pay debts not having been revoked by the codicil, and the property comprised in the settlement having come by right of the wife, neither the debt to the wife nor the children’s portions under the settlement were intended to be satisfied by the legacies under the will or the codicil.—**FRANKLIN, RE, FRANKLIN v. FRANKLIN, JOYCE, J.**, 12.

#### SETTLED LAND :

*Easement—Incorporeal hereditament—Exchange—Power of tenant for life to release easement enjoyed with settled land—Settled Land Acts, 1882 (45 & 46 Vict. c. 38), ss. 2 (10), 3 (1), 17, 21; and 1890 (53 & 54 Vict. c. 69), s. 5.*—A tenant for life has no power under the Settled Land Acts, 1882 to 1890, to release a right of way enjoyed in connection with settled land over another tenement, either by way of sale or in exchange for a release of a similar right of way enjoyed over his settled land. Nor can the tenant for life purchase the release of the latter easement out of capital money.

**JONES v. WATTS** (43 Ch. D. 574) and **RE BRACKEN’S SETTLEMENT** (1903, 1 Ch. 265) distinguished.—**BROTHERTON, RE, JOYCE, J.**, 44.

#### SETTLEMENT :

1. *Covenant to settle after-acquired property—Property appointed by donee of general power to herself—Property or power—Irish land—Irish Land Acts, 1903 (3 Ed. 7, c. 37), s. 48; 1904 (4 Ed. 7, c. 34), s. 3, sub-section 1—Bonus on sale to tenant for life—Bonus included in covenant to settle after-acquired property.*—Under the marriage settlement of E. E. T. and her husband, dated the 17th of November, 1897, certain funds were settled upon E. E. T. for life and, in certain events, for such person or persons as she should appoint. On the 26th of March, 1902, E. E. T., while covert, executed a voluntary settlement of all her property containing a covenant to settle any other property to which she then was or might in the future during her then coverture become entitled. The coverture ceased in 1904. In April, 1905, a sum of £2,800 became payable to the trustees of the marriage settlement. In July, 1905, E. E. T., then no longer covert, became entitled to exercise her power of appointment under the marriage settlement, and in December, 1905, E. E. T. appointed the sum of £2,800 to herself absolutely. Upon the question whether this sum was within the covenant to settle other or after-acquired property in the voluntary settlement of 1902,

Held, following **Townshend v. Harrowsby** (27 L.J. Ch. 553), that the appointed property was not included in the covenant to settle other or after-acquired property.

By the same voluntary settlement of 1902 E. E. T. settled her life interest in certain lands in Ireland. These were sold under the Irish Land Act, 1903, for a sum of £2,010, and under the provisions of that Act and the Irish Land Act of 1904 E. E. T., as tenant for life, became entitled to a bonus of £241 out of the Land Purchase Aid Fund.

Held, that the bonus was included in the covenant to settle other and after-acquired property in the voluntary settlement of 1902.—**TREMAYNE v. RASHLEIGH, EVE, J.**, 263; 1908, 1 Ch. 681.

2. *Estate tail—Dissentailing insurance—Consent of survivor of three*

protectors—*Fines and Recoveries Act*, 1833 (3 & 4 Will. 4, c. 74), ss. 22, 32.—The office of protector, created by the Fines and Recoveries Act, 1833, is (subject to any express direction to the contrary in the instrument executing the power) an office which survives to the survivors or survivor of any persons jointly constituted protectors of the settlement.

Held, that a disentailing assurance executed with the consent of the surviving protector of a settlement was valid, although the settlor appointed three persons protectors and gave express power to appoint successors, if and when any protector died or relinquished his office.

Decision in *Bell v. Holtby* (1873, L. R. 15 Eq. 178) followed.—*COHEN v. BAYLEY-WORTHINGTON*, *H.L.*, 238; 1908, A. C. 97.

3. *Marriage settlement—Wife's future property—Covenant to settle—Property in possession or expectancy—Contingent reversionary interest*.—A marriage settlement contained a covenant by both husband and wife that all future real and personal estate and effects whatsoever, whether in possession or in expectancy, of or to which the husband and wife or either of them in her right or by marital right should at any time or times during coverture become seized, possessed, or entitled, or of or to which the husband, or any person claiming through or under him, should by any means whatsoever become in her right or by marital right at any time or times after the marriage seized, possessed, or entitled, should be transferred to the trustees and settled upon the trusts of the settlement. During coverture the wife became entitled to a contingent reversionary interest in personal property which did not become vested until after the coverture had been determined by the death of the husband.

Held, that it was within the covenant.—*LLOYD v. PRICHARD-PARKER*, *J.*, 58; 1908, 1 Ch. 265.

See also *Bankruptcy*, *Satisfaction*.

#### SEWERS:—

*Drains—“Single private drain”—Conduit receiving drainage of several houses of one owner besides houses of other owners—Houses of one owner connected with conduit in pairs—Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 4, 41—Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59), s. 19.*—A conduit laid in private ground received and conveyed to a public sewer the drainage of several houses, six of which belonged to the respondent and the others to different owners. The respondent's six houses were connected with the conduit in pairs, so that the drainage of each pair discharged into the conduit by means of a single pipe, and each of these three pipes was admittedly a drain. The local authority having executed repairs to the conduit, which as to one end was connected with a public sewer, claimed a proportion of the expenses from the respondent on the ground that the conduit was a single private drain within section 19 of the Public Health Acts Amendment Act of 1890.

Held, dismissing the appeal by the local authority, that the respondent was not liable, because his houses were not “connected” with a public sewer all the way by a single private drain, part of the connection being by pipes admittedly sewers.—*WOOD GREEN DISTRICT COUNCIL v. JOSEPH*, *H.L.*, 726.

See also *Public Health*, *River*.

#### SHIP:—

1. *Charter-party—Demurrage—Loading—“Sundays and holidays excepted”—Loading on excepted days—Excepted days counting as working days—“Dispatch money”—“Days saved in loading”—Sunday or holiday*.—Under a charter-party, the terms of which were very ambiguous, the shipowners alleged (*inter alia*) that lay days commenced to run when they had berthed their vessel and given a twelve hours' notice. In the charterers' view that was subject to a condition that the vessel tendered for loading should be tendered at such times as were suitable to two-weekly sailings, with intervals of fourteen days between each sailing.

Held, that, on the true construction of the charter-party, the charterers' view was right.

Decision of the Court of Appeal (affirming a judgment of *Channel, J.*, reported 1907, 2 K. B. 706) reversed.—*NELSON & SONS v. NELSON LINE*, *H.L.*, 278; 1908, A. C. 108.

2. *Charter-party—Foreign law—Liability of shipowner or charterer to pay tax*.—The question was whether the shipowner or the charterer was to pay the excess of 1s. per ton of a Spanish tax levied under the denomination of “Impuesto de Transportes” and claimed by the Spanish authorities on a cargo of rails loaded on board the steamship *Fernley* at Bilbao.

Held, that the tax in question was a tax payable by the ship, and that there was no clause in the charter-party which altered the shipowner's liability to pay it.—*LONDON TRANSPORT CO. v. BESSLER & CO.*, *H.L.*, 442.

3. *Charter-party—Hire of ship—Payment of last half-month's hire*.—By a charter-party the defendants hired plaintiff's vessel for six months at a certain rate per month, or for any part of a month, the hire to continue from the time specified for terminating the charter until her redelivery to the plaintiffs, the payment of the hire to be made half-monthly in advance, except for the last half-month, which time was to be estimated and paid in advance up to such time as the vessel was expected to be redelivered, and the defendants were to have the option of continuing the charter for two further periods of six months. During the last half-month of the first six months the defendants redelivered the vessel to the plaintiffs, and claimed to pay only the proportionate part of the last half-month's hire up to the time of her redelivery.

Held, that the plaintiffs were entitled to the whole of the last half-month's hire.—*REINDEER STEAMSHIP CO. v. FORSLIND & SON*, *C.A.*, 425.

4. *Collision—Crossing vessels—Vessel picking up pilot—Duty to keep course and speed—Regulations for Preventing Collisions at Sea, 1897, articles 19, 21*.—Where two steam vessels are crossing each other within the meaning of article 19 of the Regulations for Preventing Collisions at Sea, 1897, and the vessel, whose ordinary duty would be to keep her course and speed as required by article 21, is to the knowledge of the other vessel manoeuvring to pick up a pilot from a small boat which is approaching her, she does not commit a breach of article 21 by reducing her speed so as to pick up the pilot.—“*ROANOKE*,” *THE*, *C.A.*, 426; 1908, P. 281.

5. *Collision—Limitation of liability—Charterer by demise—“Owners”—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 503, 504*.—Charterer to whom a ship is demised can claim the limitation of liability prescribed by section 503 of the Merchant Shipping Act, 1894, for “owners.”—*SIR JOHN JACKSON (LIMITED) v. OWNERS OF THE STEAMSHIP “BLANCHE”*, *H.L.*, 334; 1908, A. C. 126.

6. *Contract of carriage—Liability of shipowners—Exceptions—Unseaworthiness or unfitness of ship—Damage capable of being covered or which had been part paid for by insurance—Construction of charter-party*.—Frozen meat was shipped by the plaintiffs on the defendants' steamer under an agreement containing exceptions exempting the defendants from liability for unseaworthiness or unfitness of the ship “provided all reasonable means have been taken to provide against unseaworthiness”; “the owners not being liable for any damage or detriment to the goods which is capable of being covered by insurance or which has been wholly or in part paid for by insurance.” The refrigerating apparatus was defective, and the ship was not fit to carry the cargo, which was seriously damaged. The plaintiffs were partially covered by insurance, and had been paid the insured proportion of the loss.

Held (affirming the judgment of the Court of Appeal), that as the defendants had failed to take reasonable means to provide against the unfitness of the ship, the fact that the damage had been in part paid for by insurance did not exempt them from liability for damages arising from the neglect of their implied obligation to supply a fit ship.—*NELSON LINE v. NELSON & SONS*, *H.L.*, 170; 1908, A. C. 16.

7. *Demurrage—Arrival at port—Customary place of loading—Charter-party*.—Though there is in general an obligation on a ship to go to the berth selected by the charter-party, yet when an area is named and there is no express provision that the vessel shall go to a particular berth in that area, or to such berth as the charterers shall order, the lay days begin to run as soon as the ship has reached that area, and is at the disposal of the charterer.

Decision of *Channell, J.* (reported 1907, 1 K. B. 344, 12 Com. Cas. 173), reversed.—*LEONIS STEAMSHIP CO. v. JOSEPH RANK (LIMITED)*, *C.A.*, 94; 1908, 1 K. B. 499.

8. *Demurrage—Detention of lighters by surf—“Surf”—“Weather-working days”—Custom*.—A custom of a port that surf days are not to be considered weather-working days cannot vary the well-known business meaning of the phrase “weather-working days” in a charter-party—namely, days on which work is not prevented by bad weather.—*BENNETTS & CO. v. BROWN, K.B.D.*, 160; 1908, 1 K. B. 490.

9. *Demurrage—Exception—Strike preventing loading—“Obstruction”—Ships in turn to load*.—By a charter-party of the plaintiffs steamer a certain number of days were allowed for loading the cargo, and “if the cargo cannot be loaded by reason of riots or any dispute between masters and men occasioning a strike or lock-out of . . . railway employees or other labour connected with the working, loading, or delivery of the cargo proved to be intended for the steamer, or through obstructions on the railways or in the docks, or other loading places beyond the control of the charterer,”

the time lost was not to count as part of the lay days. Shortly before the steamer arrived at the loading port there had been a strike of the railway employees, but it was over some days before the steamer arrived. In consequence of the strike the cargo intended for the steamer, and coming by the railway, was delayed, and also a large number of other vessels were waiting in turn to load before the plaintiff's steamer. In consequence the steamer was delayed in getting to a loading berth. In an action to recover demurrage,

Held, that the strike prevented the loading, and that demurrage was not payable.—*LEONIS STEAMSHIP CO. v. JOSEPH RANK (LIMITED)*, C.A., 621.

10. *General average—Cargo of coal—“Portions of bulk cargo” on fire—Water damage to cargo—Liability of ship to contribute to general average—Merchant Shipping Act, 1894, s. 502.*—A vessel belonging to the appellants was chartered by them to a firm of merchants to carry a cargo of coal from Calcutta to Bombay. While on the voyage spontaneous combustion took place and much of the coal shipped by the charterers was damaged by fire and water. The vessel made for Colombo, and there discharged the coal. The question was whether the charterers were entitled to have made good in general average any damage done to the coal by the means taken to extinguish the fire.

Held, that the charterers were not disentitled from enforcing such contribution by reason of the fact that the fire arose from spontaneous combustion in part of the coal shipped by them in pursuance of the obligations of the charter-party.—*GREENSHIELDS, COWIE & CO. v. STEPHENS & SONS*, H.L., 727.

#### SHOP :

*Shop Hours Act, 1904 (4 Ed. 7, c. 31), s. 1—Closing order—Reasonable order—Shops of any specified class—Same trade but different classes of customers—“On the several days of the week”—Order affecting one day only—Function of the local authority under the Act.*—An order for the compulsory closing of shops, under the Shop Hours Act, 1904, is not unreasonable because the order affects shops whose customers are of a different class from customers of the majority of the shops approving the order. Section 1 of the Shop Hours Act, 1904, explained.

The local authority having obtained the approval of the Home Secretary in respect of the order are *functi officio*, and cannot be proceeded against in an action for an injunction restraining them from enforcing the order.—*ATTORNEY-GENERAL v. BRIGHTON CORPORATION*, Joyce, J., 29.

#### SOLICITOR :

1. *Bill of costs—“Disbursements”—Fees to counsel not paid when bill delivered—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*—“Disbursements” in section 37 of the Solicitors Act, 1843, means disbursements actually made when the bill of costs is delivered by the solicitor to the client. Therefore counsel's fees which have not been paid when the bill of costs is delivered ought not to be included in the bill, and must be disallowed on taxation of the bill under the section.—*SADD v. GRIFFIN*, C.A., 567; 1908, 2 K. B. 510.

2. *Costs—Common order to tax obtained by solicitors—Motion to discharge order—Time—Master's authority to decide question of retainer upon taxation—Practice.*—Certain clients applied for and obtained an extension of time to carry in a bill under a common order to tax costs which had been obtained by the solicitors, and allowed nearly two months to elapse after service of the order. They then moved to discharge the order on the ground that there was no retainer.

Motion refused. A taxing-master has authority to decide the question of retainer in such case upon taxation.—*GRAHAM & WIGLEY, RE*, Joyce, J., 684.

3. *Costs—Party and party costs taxed and paid—Subsequent bill for solicitor and client costs—Party and party items not included in second bill—Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37.*—The defendant's wife filed a petition against the defendant in the Divorce Division of the High Court for judicial separation. The husband gave the usual security for the wife's costs. The petition was dismissed, and the defendant paid the taxed costs of his wife's solicitors as between party and party. Subsequently the wife's solicitors delivered to the defendant a bill of costs containing extra costs as between solicitor and client in connection with the proceedings for judicial separation, none of the items in the party and party bill of costs, which had already been paid, being included in the bill. In an action on the bill,

Held, without expressing any opinion as to whether such extra costs were recoverable, that the bill was not a proper bill of costs within section 37 of the Solicitors Act, 1843, inasmuch as the party

and party items had, contrary to the settled practice, been omitted from the bill.—*COBBETT v. WOOD*, C.A., 617; 1908, 2 K. B. 420.

4. *Costs—Taxation—London solicitor instructing country solicitor—Relation of solicitor and client—Express instructions—Reasonable steps to comply with instructions—Discretion of taxing-master.*—Country solicitors incurred considerable disbursements, and made a substantial charge in respect of an unsuccessful attempt to effect service on behalf of a London solicitor against a client of the latter. Upon taxation the whole of these disbursements and charges were disallowed, on the ground that they were unreasonably incurred.

Held, that the taxation was between solicitor and client, and the service having been attempted upon express instructions, the master had no discretion to disallow the items entirely.—*EDDOWES & SONS, RE*, Joyce, J., 600.

5. *Costs—Taxation—Party chargeable and party liable to pay—Principle of third party taxation—Special circumstances—Solicitors Act (6 & 7 Vict. c. 73), ss. 38, [41].*—An agreement by a third party to pay costs due to a solicitor from his client is not bar to the right of the third party to apply for the taxation of the solicitor's bill under section 38 of the Solicitors Act, 1843. The paying of such a bill after notice for taxation has been given behind the back of the third party is a “special circumstance” giving a right to taxation, as a special circumstance is not confined to pressure, overcharge, or fraud, but includes any circumstance of an exceptional nature which the judge in the exercise of his judicial discretion may consider sufficient to justify such taxation.

*Re Norman* (1886, 16 Q. B. D. 673) and *Re Longbottom* (1904, 2 Ch. 153) affirmed.—*HIRST & CAPE, RE*, H.L., 684.

6. *Costs—Taxation—Rule of etiquette—Counsel entitled to brief—Employment of counsel contrary to client's instructions.*—The rule of etiquette entitling counsel under certain circumstances to a brief at the trial of an action is not binding on a lay client. Where, therefore, a solicitor, following such rule of etiquette, briefs counsel contrary to the express instructions of the lay client, he will not, on taxation, be allowed counsel's fee on such brief, nor the costs of and incident to its preparation.—*HARRISON, RE, Parker, J.*, 79; 1908, 1 Ch. 282.

7. *Friendly society—Unincorporated society—Parties enabled by statute to sue or be sued on behalf of the society—Right of society to appoint the solicitors of the litigation—Duty of nominal parties to defer to the instructions of the society—Friendly Societies Act, 1829 (10 Geo. 4, c. 56), s. 21.*—The B. Benefit Building Society is an unincorporated society established under the Friendly Societies Act, 1829, and rules framed under the Act. The society has trustees to hold its property and to represent it for the purposes of litigation. A question having arisen between the board of management and the trustees as to the solicitors to be appointed to conduct certain litigation,

Held, that the trustees were merely nominal parties and the society was the litigating party, consequently the trustees were bound to obey the directions of the society as to the appointment of the solicitors.—*LASKEY v. RUNTZ, Eve, J.*, 459.

8. *Lien—Papers—Security given by client for counsel's fees and expenses—Under what circumstances the giving of security destroys lien.*—*Prima facie* where a solicitor has a lien for his charges upon papers belonging to a client in his possession, this lien may be lost, released, or waived in the same way as a lien which any other person may possess on the property of another. The main difference between the case of a solicitor's lien, and that, for example, of an innkeeper is that where a solicitor takes any security which is in any degree inconsistent with the retention of the lien, it is the solicitor's duty to give express notice to his client if he intends to retain the lien, otherwise the lien will be taken to be abandoned. Applying this general principle to the present case, Bucknill, J., at chambers, decided that securities given in the months of November, 1900, and May, 1902, by the client to his solicitors were not given under such circumstances as to destroy the latter's lien on papers in their custody.

Held, dismissing an appeal by the client, that the judge had rightly refused to order the solicitors to hand over papers in their custody.

*Bissell v. Bradford Tramways Co.* (9 Times L. R. 337), in which *Re Taylor* (1891, 1 Ch. 50) was considered, distinguished and approved.—*MORRIS, RE*, C.A., 78; 1908, 1 K. B. 473.

9. *London agent—Retainer by country solicitor—Clerk to urban district council—Promise to pay London agent's bill by the district council—Estoppel—Contract—Ratification.*—In 1903 R., a solicitor, as clerk to the H. District Council, instructed B. L. & Co. to take certain proceedings in London in pursuance of a resolution of the council. The proceedings were accordingly taken, and

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conducted by B. L. & Co., as the London agents of R. B. L. & Co.'s bill of costs was taxed and paid on that footing. Upon a subsequent arbitration in the same matter B., as the successor of B. L. & Co., acted as solicitors upon R.'s instructions without any fresh retainer. R. became financially embarrassed. B. sent in his bill direct to the council. They, by a letter dated the 30th of October, 1906, instructed B. to send in his bill to the clerk of the council to be taxed, but after nine months refused to pay the bill, on the ground that B.'s claim was against R., to whom the council were liable.

Held, that the council were not estopped by their letter of the 30th of October, 1906, nor did this letter amount to a contract, or ratification of any contract, to pay, and, in the absence of any evidence of retainer by the council of B. as their solicitor, they were not liable to have his bill taxed as against themselves.—BAKER, RE, a SOLICITOR, Joyce, J., 173.

STAMPS.—See Revenue.

STOCK EXCHANGE :—

*Rules and regulations—Outside principal—Loan on shares—Default of principal—Application of rules.*—A firm of stockbrokers having received instructions from the plaintiff to negotiate a loan on the security of shares, obtained from the defendant for the next settling day a loan which was made to them on the condition that the shares forming the security were sold through a member of the Stock Exchange for the next settling day at a price equal to the amount of such loan. The plaintiff failing to put the brokers in funds to complete the transaction, the brokers were declared defaulters on the Stock Exchange, and the defendant was compelled to take up the shares at the fixed price by the official assignee. Subsequently, owing to a rise in price, the defendant was able to sell the shares at a considerable profit.

Held, that the rules and regulations of the Stock Exchange were only intended to bind the members of the Stock Exchange, and that the relations of an outside principal with a member of the Stock Exchange must be governed by the general law of the land, and that the defendant as mortgagee was bound to account to the plaintiff, his mortgagor, for the balance of the proceeds of the sale of shares after deducting his principal, interest, and costs.—PONSOLE v. WEBBER, Neville, J., 131; 1908, 1 Ch. 254.

SUBSIDENCE.—See Damages, Highway.

SURETY.—See Guarantee.

TELEPHONE :—

*Wayleaves—Poles in footway—Objection by local authority.*—The defendants objected to an extension of a telephone system within their district, on the general ground that poles were to be erected in the footway of a certain street to carry the wires, and that these poles would be an inconvenience to members of the public using the footway, and they said that the wires should be placed underground. It was admitted that if the wires were placed underground the expense would be very considerably more. The Postmaster-General claimed a declaration that the objection was, in the circumstances, unreasonable.

Held, that the Postmaster-General was entitled to succeed.—POSTMASTER-GENERAL v. WATFORD DISTRICT COUNCIL, Rly. Com., 302.

TORTFEASORS :—

*Satisfaction from one joint tortfeasor—Action barred against the other.*—Where satisfaction has been obtained from one of two joint tortfeasors, no action lies against the other.—H. v. O., K.B.D., 684.

TRADE-MARK :—

*Infringement—Degree of resemblance—“Stock labels”—Probability of deception is a question for the judge, but evidence of experts admissible and should be considered.*—The defendant sold brandy, not of the plaintiffs' manufacture, in bottles bearing a label of the same size and shape, also printed in gold on a white ground, and surrounded by a garland of vine leaves and grapes closely resembling the plaintiffs' label, but instead of the name “James Hennessy & Co.” and the word “Cognac,” the defendant's label had in the centre the words “Celebrated Old Brandy” without any maker's name.

Held, by the Court of Appeal (Ireland), reversing the order of the Master of the Rolls (Ireland), that although a judge ought to decide for himself whether the label was likely to mislead, he should have considered the evidence of experts which had been given upon the question; that the defendant's label, though resembling in some respects that of the plaintiffs, was a “stock label” in common use in the trade on cheaper brandies for many years, and

that the court could not stop the use of stock labels or of all labels bordered with a wreath of vine leaves and grapes; and that the injunction granted must be dissolved.

The plaintiffs appealed.

Held, that there was no such similarity between the two labels as was likely to deceive a purchaser, and that the Court of Appeal was therefore right in entering judgment for the defendant.—JAMES HENNESSY & CO. v. KEATING, H.L., 455.

TRADE UNION :—

*1. Jurisdiction—Right to sue—Funds belonging to branch—Secession of branch—Trade Union Act, 1871 (34 & 35 Vict. c. 31), s. 4 (3).*—A trade union has sufficient interest in the funds of one of its branches to enable it to sue the trustees of the branch in respect of a threatened misapplication of those funds, even though the branch has seceded from the union. But an action by the head trustees for the payment to them of the funds of a seceding branch is within section 4 of the Trade Union Act, 1871, and cannot therefore be maintained.

*Yorkshire Miners Association v. Howden* (1905, A. C. 256) applied.—COPE v. CROSSINGHAM, Eve, J., 683.

*2. “Trade dispute”—Non-payment of fine to union—“In contemplation of a trade dispute”—Threat to employer—Trade Disputes Act, 1906 (6 Ed. 7, c. 47), s. 3.*—Section 3 of the Trade Disputes Act, 1906, is perfectly general, and cannot be confined to an act done by a party to a trade dispute. Consequently a trade union official who induces an employer to discharge a workman by threatening to call out the men if the workman is retained in the employment is not liable, even though there was no dispute at the time between the employer and his workmen subsisting or contemplated, and even though the official's action may have been prompted entirely by private motives, and been unauthorized by his union.—CONWAY v. WADE, C.A., 748.

TRAMWAYS :—

*Tramway company—Power of, to alter position of telegraph wires crossing authorized ways at less elevation than trolley wire—Power to enter land of owners of wires for such alteration—Tramways Act, 1870 (33 & 34 Vict. c. 78), s. 30—Rhondda Urban District Council (Tramways) Act, 1902 (2 Ed. 7, c. clxxi.).*—By section 30 of the Tramways Act, 1870, for the purpose of laying down a tramway, the promoters may, “where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs,” alter the position of telegraph wires, subject to the restrictions contained in the said section.

Held, that the words “for the purpose of preventing frequent interruption of the traffic by repairs” only qualify the words “as may appear expedient,” and that, therefore, the promoters may, for the purpose of laying down a tramway, alter the position of the wires “where and as far as it is necessary.”

Held, also, that if, by the second restriction or proviso to the section, the promoters must, before they can remove these wires, substitute other wires, the section necessarily implies the power to effect such substitution.—RHONDDA DISTRICT COUNCIL v. TAFF VALE RAILWAY, K.B.D., 132.

See also Nuisance.

TRUSTEE :—

*Breach of trust—Unauthorized investment—Capital with penal interest made good to trust estate—Excess of interest—Accretion to capital—Tenant for life and remaindermen.*—Where a trustee has made good to the trust estate the whole of the capital employed by him in an unauthorized investment, together with interest thereon at the rate of 5 per cent., the remaindermen are not entitled to have the excess of interest over what an authorized investment would have produced treated as an accretion to capital.

Stroud v. Gwyer (28 B. 130) approved.—SLADE v. CHAIN, C.A., 240; 1908, 1 Ch. 522.

See also Attachment, Executors.

UNEMPLOYED :—

*Unemployed Workmen Act, 1905—Registrar engaged and paid by a distress committee—Committee of the council—Disqualification of members to vote—Penalty—Local Government Act, 1894.*—By the Unemployed Workmen Act, 1905, a distress committee can be appointed.

Held, that those members of a distress committee appointed by the council are themselves a committee of the council, and, therefore, a registrar who was thus appointed, being a paid officer of the committee, was disqualified from voting.—CRUMP v. LEWIS, K.B.D., 282; 1908, 1 K. B. 858.

VETERINARY SURGEON :—

*Qualification—“Canine specialist”—Misleading description—Veterinary Surgeons Act, 1881 (44 & 45 Vict. c. 62), s. 17.*—Held, that the description “Canine specialist; dog and cats treated for

"all diseases," exhibited by the respondent after his name on a board outside his residence was a wrongful taking of "an addition or description stating that he was a veterinary surgeon or practitioner of veterinary surgery or of a branch thereof, or was specially qualified to practise the same," which as he was not on the register of veterinary surgeons was an offence within section 17 of the Veterinary Surgeons Act, 1881.—ROYAL COLLEGE OF VETERINARY SURGEONS *v.* COLLINSON, *K.B.D.*, 457; 1908, 2 K. B. 248.

**VOLUNTEERS :**

*Commanding officer—Liability for uniforms supplied to corps—Contract—Volunteer Act, 1863 (26 & 27 Vict. c. 65), ss. 25—Volunteer Regulations, 407.*—Orders for uniforms and equipments for a volunteer corps having been given by or on behalf of the commanding officer.

Held, upon the facts, that the orders were given so as to make the commanding officer personally liable upon them, and upon his death, his executors were liable.

Judgment of WALTON, J. (1907, 1 K. B. 709), affirmed.—SAMUEL BROTHERS *v.* WHETHERLY, *C.A.*, 112; 1908, 1 K. B. 184.

**WATERWORKS :**

*1. Minerals—Right of support—Voluntary sale—Common law right—Compensation—Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 6, 18-27.*—The plaintiffs, under a special Act incorporating the Waterworks Clauses Act, 1847, but under which they had at the time no compulsory power of purchase, acquired land, including the minerals, for the purpose of their undertaking. The colliery company were lessees of mines under adjacent lands, and by working partly within and partly without the forty yards' limit prescribed by section 22 of the Act of 1847, they withdrew the necessary lateral support to the plaintiffs' land and caused subsidences which would have taken place to an equal extent if the waterworks had not been there. The defendants had given the plaintiffs notice under section 22 of the Act of 1847 of their intention to work their mines within the forty yards' limit, but the plaintiffs did not state their willingness to treat for compensation, and relied on their common law right of lateral support.

Held, that, assuming that the provisions of the mining clauses (sections 18-27) of the Act of 1847 applied to the case, nevertheless there was nothing in that Act which took away the plaintiffs' common law right to lateral support, and that the plaintiffs were entitled to relief on that footing.—MANCHESTER CORPORATION *v.* NEW MOSS COLLIERIES, *H.L.*, 334; 1908, A. C. 117.

*2. Water supply—Repair of communication pipe—Portion of pipe laid under highway—Waterworks Clauses Act, 1847, ss. 54, 56—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), ss. 16, 17.*—The plaintiffs, a water company, repaired a service pipe connecting their main with the defendant's house, which had become defective in a part which passed under a highway, and they sued in the county court to recover the expenses they had thus incurred. The Divisional Court affirmed the county court judge, who had given judgment for the defendant.

The Court of Appeal held that, as the plaintiffs had wholly failed to shew that the defendant had any rights in the pipe which *prima facie* might put the onus of repairing it upon him, judgment had rightly been entered against the plaintiffs. They declined to decide the question whether a provision in the special Act to the effect that the company might require a consumer to repair a pipe which he had permitted to become out of repair, rendered such a consumer liable where the repairs could only be done by first opening up the highway.—COLNE VALLEY WATER CO. *v.* HALL, *C.A.*, 57.

See also *Landlord and Tenant, Lands Clauses Act.*

**WILL :**

*1. Charitable gift—Conditional legacy—Non-fulfilment of condition—*Cy pres* doctrine.*—A. B., by his will, gave a legacy of £25,000 to a projected institute for the advancement of medical science. The scheme was abandoned before the institute was established.

Held, that the legacy was conditional upon the carrying out of the purpose of the scheme, and in the absence of anything shewing a general intent in the will to contribute the money to any charitable purpose other than the particular object, the legacy failed altogether, and could not be applied *cy pres*.—INSTITUTE OF MEDICAL SCIENCES, *Re*, Joyce, J., 682.

*2. Class—Next-of-kin—Time for ascertaining class.*—A testator bequeathed property to his nephew for life, and in certain events (which happened) "for such person or persons as on the death of my nephew will be entitled to [sic] as my next-of-kin under the statute for the distribution of intestates' estates."

Held that the class of next-of-kin was to be ascertained at the death of the testator.—WILSON, *Re*, WILSON *v.* BATCHELOR, *C.A.*, 11; 1907, 2 Ch. 572.

*3. Construction—General words "cut down by subsequent words of enumeration—Effect of word "namely"—Extrinsic evidence.*—By her will the testatrix devised the real estate to which under the codicil to the will of her father she became entitled, "namely," the residence, O. House, in the parish of O., in the county of Essex, and lands and hereditaments in the parishes of O., S., M., and H., in the same county, to her sister. The real estate to which the testatrix, became entitled under the said codicil also included 1, Hare-court, Temple. Upon the question whether 1, Hare-court was included in the specific devise or in the residuary estate,

Held that the specific enumeration was intended to be the leading description, and that 1, Hare-court was not included in the specific devise, and fell into the residuary estate.

Judgment of Lord Westbury, C., in *West v. Lawday* (11 H. L. C. 375) explained.—BROCKET, *Re*, DAWES *v.* MILLER, Joyce, J., 159; 1908, 1 Ch. 185.

*4. Construction—Gift to issue of deceased children—Children dead at date of will—Words of futurity—Original gift—Substitutional gift.*—A gift to the issue of any member of a class, in case such member "shall" die without attaining a vested interest, but "shall" leave a child or children living at or after my decease, and which child or children "shall attain the age of twenty-one years," of the share which such member would have taken if he had come under the description of the members of the class attaining a vested interest, held an original and not a substitutional gift, so as to let in the issue of members of the class who were dead at the date of the will and were not beneficiaries under the will.

*Loring v. Thomas* (1 Dr. & Sm. 497) followed.

*Gorringe v. Mahlstedt* (1907, A. C. 225) distinguished.—STOKES, *Re*, BARLOW *v.* BULLOCK, Joyce, J., 11.

*5. Construction—Gift to "then surviving children and their respective issue"—Words of limitation—Class—Alternative and original gift.*—A testator gave his residuary real and personal estate to his executors upon certain trusts, and then on the death of either of his executors he directed the survivor "to sell the whole of my real and personal estate, and cause the same to be equally divided amongst my then surviving children and their respective issue."

Held, that the estate was divisible into as many shares as there were children who survived the period of distribution or pre-deceased that period leaving issue who so survived, and that such surviving issue in each case took the share which the child so dying would have taken had he or she survived the period of distribution.—COULDEN, *Re*, Parker, J., 172; 1908, 1 Ch. 320.

*6. Construction—Partnership at will—Bequest by partner of income of his share to his widow for life, remainder to his partner—Intention to bequeath share to partner subject to widow's life interest, or to bequeath share in partnership to the widow—Right of either party to dissolve partnership without consent of the other—Undrawn profits of testator—Liability of firm to the executors.*—A testator bequeathed the income of his share in a partnership at will to his wife for her life, and after her death he gave his share to his partner.

Held, firstly, that the partnership determined by the testator's death, and even if the bequest could operate as a specific gift, the result was a partnership at will between the partner and the widow which could be determined by either, without the consent of the other.

The testator at the time of his death was entitled to a sum in respect of undrawn profits in the partnership.

Held, that this sum became payable to the executors of the testator.—CRAVEN *v.* CRAVEN, Joyce, J. 498.

See also *Charity, Executors, Power, Probate.*

**WORKMEN'S COMPENSATION.**—See *Master and Servant.*

**WRIT.**—See *Practice.*

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